

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



ORIGINAL

74-1037

## United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

*Appellee,*

v.

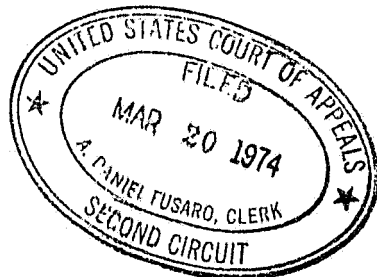
JOHN CAPRA, LEOLUCA GUARINO and STEPHEN DELLACAVA,

*Defendants-Appellants.*

On Appeal from Judgment of Conviction from the United States  
District Court for the Southern District of New York

### Appendix

(Vol. IV - Pages 744 - 1216)



BARRY IVAN SLOTNICK  
*Attorney for Appellant, CAPRA*  
15 Park Row  
New York, N.Y. 10038  
(212) 233-5390

GEORGE L. SANTANGELO  
*Attorney for Defendant, GUARINO*  
253 Broadway  
New York, N.Y. 10007  
(212) 267-4488

LAWRENCE STERN  
*Attorney for Appellant, DELLACAVA*  
343 West 29th Street  
New York, N.Y. 10001  
(212) 947-0537

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rdr28

CLIFFORD SCOTT FISHMAN, called  
as a witness on behalf of the government, being  
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Fishman, what is your occupation?

A I'm assistant district attorney in and for the  
County of New York, currently assigned to the office of  
prosecution of the special narcotics courts of the City of  
New York.

Q How long have you been so associated with the  
office of prosecution for the special narcotics courts?

A I believe the office of prosecution came into  
formal existence in the spring of 1972.

Q How long have you been with the district  
attorney's office?

A Since August of 1969.

Q I want to direct your attention, Mr. Fishman,  
to November 8, 1971. On that date did you have a  
meeting with Detectives Eaton, Finelli and McCrory in your  
office?

A Yes, sir, I did.

Q Will you tell the Court what you discussed with  
those officers at that time?



rdr29

Fishman-direct

1  
2  
3 A At that time I discussed with them information  
4 and evidence they had related to an individual named  
5 Joseph Della Valle. They came to me or to my office  
6 to ascertain whether or not they might be able to get  
7 a court approved wiretap to intercept certain conversations  
8 of Mr. Della Valle.

9 THE COURT: When is this?

10 THE WITNESS: November 8, 1971, your Honor.

11 Q Did you have other meetings with these officers  
12 during the course of November and the early part of  
13 December with respect to this proposed wiretap?

14 A Yes, sir, several.

15 Q Now, pursuant to these discussions with Eaton  
16 and others did you prepare certain affidavits in support of  
17 an application to intercept telephone conversations of a  
18 Joseph Della Valle relating to narcotics on telephone No.  
19 722-9595 located in Diane's Bar, and telephone No. 824-6406,  
20 located in a residence in the Bronx?

21 A Yes, sir, I did.

22 Q Mr. Fishman, I want to direct your attention  
23 now to December 8, 1971. On that date did you present  
24 these affidavits to Judge Harold Birns, a Supreme Court  
25 Justice?

A Yes, sir, I presented them first, of course,

rdr30

Fishman-direct

1  
2 to Mr. Hogan. Then after the detectives and the lieutenant  
3 had signed their affidavits and Mr. Hogan approved and  
4 signed the application I presented them to Justice Birns.  
5

6 Q Did Judge Birns, as a result of this, sign an  
7 order authorizing such interception?

8 A Yes, sir, he did.

9 Q I'm going to show you Government's Exhibit 1  
10 for identification and ask -- I'm sorry, in evidence, and  
11 ask you to look at it and identify it, if you can.

12 A The first three sheets of paper contain the  
13 order signed by Justice Birns, that is Justice Birns'  
14 signature, he signed it in my presence. The next two  
15 pieces of paper contain the affidavit and applications  
16 signed by District Attorney Frank Hogan of New York County.  
17 That was also signed and sworn to by Mr. Hogan and in my  
18 presence.

19 The next several pieces of paper, pages 5,  
20 I'm talking about the numbers on the bottom added in ink,  
21 through 24, contain the affidavit of Detective George  
22 Eaton, which was also signed and sworn to in my presence  
23 prior to its submission to Mr. Hogan. And the affidavit  
24 also contains a number of written in ink notations that  
25 were added to the affidavit by Detective Eaton and initialed  
by Justice Birns or initialed by Justice Birns where there

1  
2 are materials in the affidavit indicating additional  
3 information had been made known to Justice Birns.

4 Following Detective Eaton's affidavit is an  
5 affidavit of Lt. John Hill, which I also helped to prepare.  
6 It also contains a notation made by Justice Birns in the  
7 margin, which was initialed by the justice in my presence.  
8 It contains the signature of Justice Hill, which I saw  
9 signed and sworn to.

10 Q That would be Lt. Hill.

11 A Yes, in my presence prior to the submission  
12 of these papers to Mr. Hogan. And an affidavit submitted  
13 by Detective William McCrory, the last page, except  
14 for the back, which I also helped to prepare and which  
15 Detective McCrory signed and swore to in my presence prior  
16 to the submission of the affidavits to Mr. Hogan.

17 Q Each of these affidavits, these were the ones  
18 that you were referring to that were submitted to Judge  
19 Birns in support of the applications made for the wire?

20 A That's correct.

21 THE COURT: This Exhibit 1, gentlemen, is the  
22 same or is the original of what is Exhibit A to Mr.  
23 Slotnick's motion papers. Is that right?

24 MR. SLOTNICK: That is correct, your Honor.

25 THE COURT: It's the Diane's Bar number order?

rdr32

Fishman-direct

MR. FELD: December 8, your Honor.

THE COURT: Thank you.

Q Mr. Fishman, I want to direct your attention to November 23, 1971. On that date did you meet with Assistant District Attorney Herman Kaufman, Detective Eaton, and others?

A Yes, sir, I did.

Q Now, can you tell the Court what transpired at this meeting?

A YES. Detective Eaton and others and I had been working on the affidavits and on November 23 I went to see, with Detective Eaton and others, I went to see Assistant District Attorney Herman Kaufman then assigned to the appeals bureau. Mr. Kaufman was one of the two or three senior men in the appeals bureau.

The regular procedure of the New York County DA's warrants before Mr. Hogan would even consider an application it had to be approved by one of the senior members of the appeals bureau, and applications for an eavesdropping wire.

On November 23 Detective Eaton and I and two other detectives went to Mr. Kaufman and discussed with him the evidence which we had and the evidence that we would be able to put in the affidavits for the applications. We...

rdr33

Fishman-direct

1 reviewed that with Mr. Kaufman. He told us in his  
2 opinion we did have sufficient probable cause to obtain the  
3 eavesdropping warrant. During the conversation we told  
4 Mr. Kaufman that the telephone involved at Diane's Bar,  
5 the bar and grill on Second Avenue, was a public phone, a pay  
6 phone. Mr. Kaufman instructed us for approximately  
7 or for several minutes that since it was a public phone,  
8 the officer who would be monitoring the eavesdropping  
9 would have to be extremely careful about the way in which  
10 they monitored it. He gave us a description of the  
11 Berger-Katz line of cases and emphasized a public phone  
12 was particularly a delicate type of telephone to be  
13 intercepting upon because of the likelihood that a vast  
14 number of people unrelated to any investigation might use  
15 it.

17 Q Did he say anything to you with respect to  
18 identifying the subject named in the order on this tele-  
19 phone?

20 A Yes. That since the order, in particular  
21 for Joseph Della Valle, it was his conversations in  
22 particular that we were entitled to eavesdrop upon,  
23 but we discussed with him the fact that only one member  
24 of the investigating team, Eaton, had ever heard the voice  
25 of Joseph Della Valle and that under adverse circumstances

1  
2 from a phone booth in the street, overhearing a conversation  
3 between an informant, the one referred to in the affidavit,  
4 and Mr. Della Valle. Because of that there would be some  
5 difficulties identifying the voice. Mr. Kaufman told us  
6 that good faith had to be exercised in the execution of the  
7 eavesdropping warrant but that until we were able to  
8 firmly identify the voice of Mr. Della Valle, a certain  
9 amount of good faith leeway could be exercised to listen to  
10 conversations which might be his until we could identify in  
11 fact whether or not the voice they were listening to was  
12 Mr. Della Valle's voice.

13 Q Mr. Fishman, I want to direct your attention  
14 to December 8, 1971. That's the date that you referred  
15 to that Judge Birns signed the order in question. Did  
16 you speak with a Lt. John Hill, Eaton and others about  
17 monitoring the wiretap at Diane's Bar on that date?

18 A Yes, sir, I did. I spent a number of hours  
19 with those officers while we were in the process --

20 THE COURT: I'm sorry, what date?

21 MR. FEPPER: December 8, 1971.

22 THE COURT: Thank you.

23 A During the period of time while we were pre-  
24 paring -- we had prepared but while we were awaiting the  
25 appointments with Mr. Hogan and Justice Birns I want

1  
2 over with them, section by section, article 700 of the  
3 criminal procedure law, what procedures must be followed in  
4 terms of monitoring and executing an eavesdropping warrant.  
5 I gave them a number of instructions. I specifically  
6 told them, as the warrant says, that the execution of the  
7 warrant had to be in such fashion that no privileged conver-  
8 sations could be intercepted.

9 I specified that privileged conversations  
10 included conversations between an attorney and his  
11 client, between a doctor and a patient, between a  
12 clergyman and a parishioner, and between a husband and  
13 wife which related to the confidential relationships that  
14 those four classes of people might have.

15 I also reiterated what we heard from Mr.  
16 Kaufman, even putting aside privileged conversations we  
17 didn't have blanket authority to listen to everything  
18 and anything that came off the phone but we had authority  
19 to listen to conversations of Mr. Della Valle which concerned  
20 the transport, sale, etc., of narcotics.

21 I also stressed extremely strongly that under no  
22 circumstances whatsoever were they ever to leave the  
23 plant unmanned and leave the tape recorder on automatic;  
24 that this was something that had been criticized already in  
25 the courts and this was never to be done. If it was a

1  
2 question of maintaining surveillance or turn off the  
3 plant thread to make their choice. They could not  
4 leave the plant unmanned.

5 Q Did you instruct them with respect to listening  
6 to conversations that related to other crimes?

7 A Yes. I referred them or I referred myself  
8 to sections of the criminal procedure law which relate what  
9 action, if any, is to be taken if evidence of other crimes  
10 are to be intercepted. I explained should they inter-  
11 cept such evidence they were to notify me immediately  
12 and the legal steps to be taken under such circumstances  
13 would be initiated by me and by my office.

14 Q Did you also give the same instructions with  
15 respect to conversations relating to narcotics, of  
16 other people?

17 A Yes, sir, I did. I was to be notified  
18 immediately if anything like that occurred.

19 Q Did you also instruct these men to keep you  
20 posted during the course of the electronic surveillance?

21 A Yes, sir.

22 Q Did in fact the officers responsible for  
23 monitoring the Diame's Bar wiretap keep you advised  
24 during the progress of the monitoring?

25 A Yes, sir, I did. I received phone calls



rdr37

Fishman-direct

from them on a regular basis during the first week or so and I received transcripts from them also on a frequent basis.

Q I direct your attention now to December 20, 1971.

On that date did Detective Eaton meet with you in your office?

A Yes, sir, he did.

Q Can you tell the Court the substance of your conversation with Eaton on that date?

A Yes, sir, I can.

THE COURT: Dates I have trouble getting.

MR. PEPPER: December 20, 1971.

THE COURT: Thank you.

A Yes, sir. On December 20, which was a Monday, Detective Eaton spent a good deal of time in my office and he reviewed with me in detail the transcripts which had been prepared of conversations intercepted up to December 15. He also told me about a conversation which had been intercepted on December 19, the previous day, a Sunday, in which a conversation had been intercepted between an individual making a phone call from the bar and another individual in which it was ascertained for the first time that one person whose conversations

1 rdr38

Fishman-direct

2 had been intercepted, a person who had been referred to  
3 as Steve, Stevie or Beansy, and the person we believed on  
4 that December 1 conversation to be Joseph Della Valle  
5 were in fact two different people rather than one in the  
6 same.

7 He told me that we had this basis for belief  
8 because during the conversation which Mr. Della Valle  
9 had, he turned at one point -- it could be heard over the  
10 wire that he turned away and said something to the effect  
11 "How long are you going to be here, Beansy?"

12 That was the first indication we had that  
13 Beansy and Della Valle were two people.

14 Q After this conversation did you instruct  
15 Eaton to attempt to identify by name this individual  
16 referred to as Beansy or Stevie?

17 A Yes, sir, I did.

18 Q And was this for the purpose of allowing you  
19 to amend the wire tap order?

20 A Yes, sir. By that point, when we first learned  
21 that Della Valle and Stevie or Beansy were two separate  
22 people, conversations had already been intercepted involving  
23 Stevie or Beansy, which in Detective Eaton's opinion and  
24 mine, were related to narcotics.

25 At that point we wanted to expand or amend the

rdr39

Fishman-direct

eavesdropping warrant so we could continue to intercept those conversations. We wanted to identify Steve or Beansy more completely until such an amendment.

Q Now, did George Eaton subsequently tell you that he had identified --

MR. MC ALEVY: I'm going to object to the leading nature of these questions.

THE COURT: Sustained.

Q Did you subsequently learn the identification or the name of this individual referred to as Stevie or Beansy?

A Yes, sir, I did. It was either a day or two before or a day or two after Christmas, give or take a couple of days in either direction. As I recall, my conversations with Detective Eaton, his identity was first tentatively learned by Detective Eaton shortly after December -- I believe it was December 23, 1971. And when he advised me of what he thought he knew at that point and then when he confirmed the fact that the individual was Stephen Della Cava, he warned me of that also. That would be in the latter part of '71.

Q At that point did you begin preparing affidavits in support of an application to extend the order at Diane's Bar to include conversations relating

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rdr39a

Fishman-direct

755a

to narcotics with Stephen Della Cava?

A Yes, sir, I did.

Q I'm going to direct your attention to the  
6th of January, 1971. On that date --

A 1971 or '72?

Q '72, excuse me. On that date did you appear  
before Judge Birns?

A Yes, I did.

Q Did the judge at that time sign an order  
extending the previous order to include conversations of  
Dellacava?

A Yes, sir.

Q I am going to show you what has been received  
as Government's Exhibit 2 and ask you to look at it and  
identify it if you can.

A The first two pages contain the eavesdropping  
warrant itself and contain the signature of Justice  
Birns. He signed the warrant in my presence.

The next two pages contain the affidavit and  
applications of District Attorney Hogan, in which he  
applied for the extension and amendment of the eaves-  
dropping warrant on Diane's Bar. It contains Mr.  
Hogan's signature, which he signed in my presence  
and which he swore to in my presence.

The rest of the pages, 23 pages in all, contain  
the affidavit of Detective George Eaton, most of which

1 rda2

Fishman-direct

2 are typed, a few items of which were filled in by hand  
3 and Detective Eaton initialed the changes, as did Justice  
4 Birns.

5 On the 23rd page of it is the signature of  
6 Detective Eaton which he signed in my presence and swore  
7 to in my presence, again before I submitted the papers  
8 to Mr. Hogan for his approval.

9 I might add that Detective Eaton was with me  
10 on both December 8th and on January 6th when I went  
11 before Justice Birns with the applications for the war-  
12 rant.

13 Q During January and February of 1972 did the  
14 officers continue to monitor conversations up to the  
15 expiration date on the order at Diane's Bar?

16 A Yes, they did.

17 Q And also did Eaton continue to keep you posted  
18 on the progress of the surveillance?

19 A Yes, sir. I received transcripts on a regu-  
20 lar basis. In between the times the transcripts were  
21 brought to my office I was on the phone with Detective Eaton  
22 or other officers on the investigating team on a daily  
23 or almost daily basis.

24 Q Were any further extension applications made on  
25 Diane's Bar?

rda3

Fishman-direct

1  
2 A No further applications were ever brought before  
3 the justice, no.

4 Q Now, were the tapes made by the monitoring  
5 officers delivered to your office, that would be the  
6 District Attorney's office?

7 A Yes. The Investigations Bureau of the New  
8 York County District Attorney's office received the tapes  
9 and they were stored in the safe of the Investigations  
10 Bureau at 155 Leonard Street.

11 Q Now, do you recall the date or approximate  
12 date when these tapes were delivered to Judge Birns for  
13 sealing?

14 A It was, I believe, in August of this year.

15 Q Now, did you receive any type of order from  
16 Judge Birns to store these particular tapes in the  
17 District Attorney's office for the duration of the in-  
18 vestigation and up to and including the 3rd of August?

19 A Yes.

20 MR. FEITELL: I will object. This is  
21 leading.

22 THE COURT: Well, it's a lawyer on the stand.  
23 I believe he knows he must tell the truth. I will  
24 allow it.

25 THE WITNESS: Thank you, your Honor.

1           A       I had discussed with Justice Birns -- I had told  
2 him --  
3

4           THE COURT:       What's the answer?       The  
5 answer is yes?

6           THE WITNESS:     Yes.

7           THE COURT:       Next question.

8       BY MR. FEFFER:

9           Q       In what form did you receive this order  
10 from Justice Birns?

11          A       Oral, not written.

12          MR. SLOTNICK:    I move to strike this on the  
13 basis of your Honor's ruling on yesterday.    Your Honor  
14 indicated he is not interested in oral instructions of  
15 judges, you like to look at the written orders.    Your  
16 Honor would preclude me from questioning on your order of  
17 yesterday.

18          THE COURT:       I don't have to be that con-  
19 sistent.    I find the situation is quite distinguishable.  
20 One is a question of what kind of instructions were given  
21 on a rather elaborate and subtle subject which entails a  
22 lot of inquiry; another is a question whether a judge  
23 said:    you keep them in your safe until such-and-such  
24 a date, and I find them different.    I will overrule the  
25 objection.



1 THE WITNESS: Could I have the question read  
2 back, please, sir?  
3

4 (Question and answer read.)

5 A I told Justice Birns that the normal procedure  
6 our District Attorney's office followed was that the  
7 tapes were stored in the Investigation Bureau's safe, and  
8 he said that was perfectly acceptable.

9 Q Now, have notices been sent out to those in-  
10 dividuals whose conversations were intercepted at Diane's  
11 Bar notifying them of such interception?

12 A Written notice has not been sent out by my  
13 office, no.

14 Q Did you receive any type of instructions,  
15 again from the judge, with respect to notifying indivi-  
16 duals whose voices were intercepted?

17 A Yes. Again oral rather than written.

18 Q Tell the court what those instructions were?

19 MR. SLOTNICK: Objection, your Honor.

20 THE COURT: Let me make clear the ruling, Mr.  
21 Slotnick so what I perceive is its fairness will be more  
22 apparent than I have perhaps made.

23 The argument is that a factor that might help  
24 the government to show minimization may be absent here;  
25 that is, instructions by the judge to minimize and how to

1 rda6

Fishman-direct

2 minimize, and so on. In barring you from going into that,  
3 I believe all I did was to deprive the government of an  
4 argument. They don't have that in their favor and I  
5 don't want them to have that in their favor, that is,  
6 unwritten of the judge that goes to the heart of this  
7 matter, which is minimization. I feel that if the  
8 judge wants the record following upon his order to  
9 contain that kind of affirmative evidence for the govern-  
10 ment, he ought to put it in his order.

11 Therefore, in cutting off that line of inquiry  
12 I don't believe I have injured any defendant but simply  
13 limited the government in its proof in the final analysis.

14 Here, however, I don't think we need that  
15 kind of limitation because the orders are relatively simple  
16 and they relate to matters to be relatively ministerial  
17 and don't seem to me to be of enormous moment.

18 That's the general nature of the distinguishing  
19 rationale, if I see it. Perhaps it could be better  
20 if I could write it out but I thought I would tell you  
21 that for your general guidance.

22 THE WITNESS: Could I have the last question  
23 read back, please?

24 (Question read.)

25 A On a number of subsequent occasions I spoke to

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2 Justice Birns --

3 MR. SLOTNICK: Can we have the dates when  
4 and where these conversations took place?

5 THE COURT: As nearly as the witness can  
6 give them, yes.

7 A Well, I can say there were several conversa-  
8 tions throughout 1972, and I believe there were conver-  
9 sations also in 1973, either in Justice Birns' chambers  
10 or over the telephone from me to Justice Birns. I had  
11 conversations with him about the fact that an investiga-  
12 tion was continuing and that notice of the eavesdropping on  
13 the phone at Diane's Bar at each point that I had this  
14 conversation would in my opinion jeopardize the continued  
15 success of the investigation, and that therefore I did not  
16 intend to or plan to send out notice.

17 He replied that while the investigation is  
18 continuing, there is no need to give notice.

19 (Government's Exhibits 5 and 6 were marked  
20 for identification.)

21 BY MR. FEEFER:

22 Q Mr. Fishman, I'm going to show you Government's  
23 Exhibit 5 for identification and ask you to look at  
24 it and identify it, if you can.

25 A Yes, sir, I can. This is an affidavit prepared

1 by Detective George Eaton under my supervision and at my  
2 direction listing the eavesdropping warrants which Mr.  
3 Hogan had applied for to Justice Birns, and which were  
4 granted by Justice Birns in the investigation at Diane's  
5 Bar and subsequent investigations. It bears the signa-  
6 ture of Detective Eaton, which I recognize, and the  
7 fact that it was sworn to by Detective Eaton before  
8 Justice Birns. I recognize Justice Birns' signature  
9 as well. It is an affidavit he prepared at my direction  
10 indicating the release of tape which contained the conver-  
11 sations intercepted on each of the eavesdropping warrants  
12 that we obtained from Justice Birns and the --

14 Q Would that include Diane's Bar?

15 A Yes, it would. 87/1971 and 87/1971 were  
16 extension of the two eavesdropping warrants for Diane's  
17 Bar.

18 Q What else does it contain besides that informa-  
19 tion?

20 A It contains the names, to the extent identi-  
21 fiable, of the individuals whose conversations were  
22 intercepted over each of the eavesdropping warrants,  
23 including the eavesdropping warrants following Diane's Bar.  
24 And it further contains a breakdown of those lists of  
25 people to people whose conversations during these investi-

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Fishman-direct

gations involved narcotics in Detective Eaton's opinion, conversations involving other crimes, and a list of the people whom Detective Eaton requested be the listed people notified of the fact that such conversations were intercepted. That list is found in paragraph 31 of Detective Eaton's affidavit.

Q I want to show you Government's Exhibit 6 for identification and ask you to look at it and identify it, if you can.

A Yes. This is a court order which was prepared at my direction and which was submitted by Detective Eaton to Justice Birns, again at my direction. It is a court order which was, in effect, the companion paper submitted to Justice Birns, companion to Government's Exhibit 5.

It is the order issued by Justice Birns on August 9, 1973, ordering the sealing of the tapes containing the conversations intercepted during those eavesdropping warrants, including the two at Diane's Bar. And also authorizing notification to be given to the individuals named in paragraph 31 of Detective Eaton's affidavit that such conversations were intercepted.

Q Now, were the tapes sealed pursuant to that order?

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2                    A                    Yes, sir, they were.

3                    MR. FEFFER:           At this time I offer Govern-  
4                    ment's 5 and 6.

5                    MR. SLOTNICK:           For the purposes of this  
6                    hearing, your Honor, as to 5 and 6 I have no objection.

7                    THE COURT:           Yes, could I ask whether that  
8                    much time is necessary for formulating objections to  
9                    this?

10                   MR. FEITELL:           There are some lawyers' names  
11                   listed in here.           I wanted to take a look and see if my  
12                   own name was in here, Judge.

13                   THE COURT:           Would that make ot objection-  
14                   able?

15                   MR. FEITELL:           It might relate to other  
16                   conversations which were privileged.

17                   We have concluded.           There is no objection.

18                   (Government's Exhibits 5 and 6 were received  
19                   in evidence.)

20                   MR. FEITELL:           I might say I didn't find my  
21                   name.

22                   BY MR. FEFFER:

23                   Q                   Mr. Fishman, did Judge Birn's some time during  
24                   September authorize this particular tapes be unsealed for  
25                   production in this courthouse?

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Fishman-direct

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2 A Yes, sir, he did.

3 (Government's Exhibit 7 was marked for iden-  
4 tification.)

xx 5 Q I am going to show you 7 for identification  
6 and ask you to look at just the order, which consists of  
7 the first three pages, and ask if you can identify them?

8 A Yes. This is an order which was sent to my  
9 office, I believe, from your office and which I read and  
10 which was delivered to Justice Birns and which he signed.  
11 I recognize Justice Birns' signature. This is the  
12 order that authorized the release of the 16 specified reels  
13 of tapes.

14 Q These would be the tapes from the Diane's Bar  
15 wire tap?

16 A Yes.

17 MR. FEEFFER: Your Honor, I offer 7 in evi-  
18 dence.

19 THE COURT: We will take a 10-minute recess.  
20 (Recess.)

21 MR. FEEFFER: Your Honor, I take it there  
22 are no objections to 7?

23 MR. SLOTNICK: No objection for the purposes  
24 of the hearing only.

25 MR. FEITELL: No objection.

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(Government's Exhibit 7 was received in evidence.)

XX  
BY MR. PEEFER:

Q Mr. Fishman, some time during the summer of 1972 did you have an occasion to circulate a memorandum or writing containing instructions, your instructions, on monitoring?

A Yes, sir, I did.

THE COURT: When was this?

THE WITNESS: Summer of 1972, your Honor.

Q I show you Government's Exhibit 3 for identification and ask you to look at it and identify it, if you can.

A Yes, sir. This is the memorandum that I drew up and distributed to the officers who were involved in the monitoring and executing of eavesdropping warrant 71 of 1972.

Q Now, did it -- or were the oral instructions that you gave the monitoring officers, that would be Hill and Eaton, in November and December of 1971 -- were they substantially incorporated in this written memorandum that you distributed later?

A Yes, sir, they were.

MR. PEEFER: The government offers 3, your



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2 Honor.

3 MR. SLOTNICK: No objection for the purpose  
4 of the hearing, and I hope it is a legible copy.

5 (Government's Exhibit 3 was received in  
6 evidence.)

7 MR. FEFFER: I have no further questions,  
8 your Honor.

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## CROSS EXAMINATION

BY MR. SLOTNICK:

Q Mr. Fishman, is there a legible copy of Government's Exhibit 3 somewhere in the Narcotics Unit of the District Attorney's office?

A I have one more legible copy in my office. Obviously the exhibit that is submitted is a Xerox copy of a Xerox copy of a Xerox copy.

Q Would you provide it for the court and counsel's convenience at some future date; perhaps this afternoon?

A Certainly.

Q You indicated to us that during November of 1971 Detective Eaton and some other individuals came to see you with regard to obtaining eavesdropping warrants, is that correct?

A That's correct.

Q Would you tell us who was present at the meeting, as best you can, the date of the meeting and the context of the conversation of the meeting?

A The first time I met Detective Eaton in this context was November 8, 1971. Detective McCrory was with him and a Detective Finelli was with him. There was a brief conversation between myself, those three detectives and Assistant District Attorney Donald Grajales, who

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2 was the senior narcotics assistant DA in the office at the  
3 time.

4 Mr. Grajales told me to speak to the officers  
5 in depth and to ascertain what information they had at  
6 that point to get an eavesdropping warrant, and I did  
7 so for a number of hours, I believe.

8 Q Had you known those officers on any prior  
9 occasions?

10 A I do not believe so.

11 Q So they came to you fresh, you never met them  
12 before?

13 A Correct.

14 Q What did you understand that your job was to  
15 be with regard to this initial stage of the proceedings?

16 A Primarily to ascertain whether or not probable  
17 cause -- whether or not the officers had sufficient  
18 evidence that amounted to probable cause to obtain the  
19 eavesdropping warrant, and if they did not, to discuss  
20 with them ways in which additional evidence amounting to  
21 probable cause might be obtained.

22 Q Did you explain to them that their purpose  
23 in obtaining an eavesdropping warrant was a very  
24 serious matter and it had to be taken up with other in-  
25 dividuals along the line?

1           A       I don't recall if I explained to them the inner  
2 office procedure of it.    I know I explained to them  
3 that the applications had to be made by Mr. Hogan and it  
4 had to be approved by him before we could take it to a  
5 justice of the Supreme Court.  
6

7           Q       At this time had you ever been in a position  
8 where you had the same position with regard to speaking  
9 to detectives about electronic eavesdropping warrants?

10          A       I had had conversations with other detec-  
11 tives who had been or were involved in eavesdropping  
12 warrants but this is the first eavesdropping warrant I  
13 personally handled, if that is what you mean.

14          Q       This is the first one that you handled?

15          A       This was my first, yes.

16          Q       By the way, you apparently have a diary with  
17 you, is that correct?

18          A       That's correct.

19          Q       I would appreciate it if you would refer to  
20 your diary as I ask you the questions, and please have  
21 no hesitancy in doing it.

22          A       If I feel the need to, I will.

23          Q       Now, on November 23rd you then had a second  
24 conference with Detective Eaton and other detectives,  
25 is that correct?

1 rrda  
2 A No, that is not. It was not a second confer-  
3 ence; it was an eighth or ninth or sixth conference, but  
4 I did have a conference with him on that date also,  
5 yes.

6 Q What happened during your second conference?

7 A During the second conference Detective Eaton  
8 and I and other members of Detective Eaton's team sat  
9 down and discussed, first with Mr. Grajales and also  
10 Assistant DA David Cunningham, the evidence gathered  
11 to date and discussed with both DAs to assess whether  
12 there was probable cause to obtain the warrant.

13 After we agreed, Cunningham, Grajales and  
14 myself, that there was, I went with Detective Eaton and  
15 others to Mr. Kaufman of the Appeals Bureau to review whe-  
16 ther or not in his opinion there was probable cause to ob-  
17 tain the warrant.

18 Q This took place prior to Detective Eaton's  
19 observing Joseph Della Valle, is that correct?

20 A Prior to his observing Joseph Della Valle  
21 when and where?

22 Q I will withdraw the question.

23 Do you remember on the conferences prior to  
24 your speaking to Assistant District Attorney Kaufman  
25 in the Appeals Bureau -- I assume that's the same Kaufman

1 that is still there?

2 A He is no longer there. He is a professor  
3 of law at Washington and Lee University.  
4

5 Q Prior to your conference with Assistant District  
6 Attorney Kaufman, now Professor Kaufman, do you know  
7 whether Detective Eaton had indicated to you that he had  
8 ever observed the body, the personage of Joseph Della  
9 Valle?

10 A I don't recall the answer to that, although  
11 there may be something in the affidavit which would indi-  
12 cate he had.

13 Q Do you know or do you recollect whether Detec-  
14 tive Eaton at that time had indicated to you he knew the  
15 place of residence of Joseph Della Valle?

16 A Yes.

17 Q Do you know whether he indicated to you  
18 whether he knew how old Joseph Della Valle was?

19 A Can I peruse the affidavit briefly? I might  
20 be able to give you a better answer.

21 Q To refresh your recollection you can use  
22 anything.

23 A If I may answer a previous question,  
24 paragraph 12 of Detective Eaton's affidavit of December  
25 8th, that on November 2nd he had observed Joseph Della

Valle enter the building on Theriot Avenue, I believe that information had been given to me before we went to Mr. Kaufman.

Q But you are not sure?

A I am 90 per cent sure, if I can give you that kind of answer.

Q I wouldn't quibble with you. Go ahead.

A I am sorry.

THE WITNESS: Can you reread the immediate question before me?

(Question read.)

A I don't recall whether he indicated to me he knew the exact number of years. I do recall he indicated the approximate age.

Q Which was?

A In the 20s-to-30s range, is my recollection of it, but I know he told me more specifically than that.

Q Well, prior to your going to speak to Assistant District Attorney Kaufman, what do you recollect Detective Eaton told you about Joseph Della Valle?

A Well, his address, the fact that he frequented Diane's Bar, the fact that he had been associated with a number of other individuals that had been the subject of some inquiry by the Police Department in a narcotics

1 context, and, of course, the fact that the confidential  
2 informant had had previous dealings with Mr. Della Valle  
3 nad had made the conversations specified in the tele-  
4 phone calls and conversations listed in Detective Eaton's  
5 affidavit.  
6

7 Q Did he tell you that he couldn't continue the  
8 investigation further without the benefit of the search  
9 warrant?

10 MR. PEPPER: Objection, your Honor, as  
11 to relevancy to this hearing.

12 MR. SLOTNICK: We discussed the fact that  
13 affidavits were submitted, that this assistant district  
14 attorney prepared the affidavits.

15 One of the allegations in the affidavit is  
16 the fact that he could not go any further in the investi-  
17 gation without the benefit of an eavesdropping warrant.

18 THE COURT: Are you asking the lawyer whether  
19 he put something in the affidavit that he made up?

20 MR. SLOTNICK: Not for that purpose, your  
21 Honor

22 THE COURT: What's the point of this? If  
23 he wrote it in the affidavit which he drafted, until  
24 you are trying to bring out, which perhaps you may, that  
25 he wrote something down that he made up and that the



affiant hadn't told him, I can't see the point in this.

MR. SLOTNICK: I am going into his own, since he was eventually the supervisor of all of this grandiose wire tap business -- I am going into his own thoughts, his own productivity with regard to supervision:

When a detective told him something, why would he rely on it? And I give you the offer of proof in front of the witness, in view of the fact that the detective had an informant.

THE COURT: Objection sustained.

BY MR. SLOTNICK:

Q Now, when you appeared before Assistant District Attorney Kaufman, he indicated to you, since this phone was public, there had to be great care with regard to monitoring and listening to this phone, is that correct?

A That is correct.

Q As a matter of fact, this was something that you had probably originally told the detective?

A I don't recall specifically having told the detectives that before Mr. Kaufman made it known to all of us.

Q But upon learning that it was a public phone, were you concerned at all about the propriety of tapping

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Fishman-cross

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2 a public phone?

3 A I was concerned about every aspect of eaves-  
4 dropping. First, because of the nature of eavesdrop-  
5 ping, and, second, because I had had no experience with  
6 it before I wanted to make sure I touched every conceivable  
7 base along the way.

8 Q In all probability -- did you go back and read  
9 Berger and Katz?

10 A I had had some familiarity in law school with  
11 the cases. I don't recall reading them after Mr.  
12 Kaufman mentioned them to me, no.

13 Q You recollected that Katz was a public phone  
14 proposition?

15 A I recollect in that line of cases there was a  
16 public phone situation involved.

17 Q You knew at the time and ultimately that if  
18 you presented your seal of approval, that a judge might  
19 sign papers indicating that a public phone could be  
20 tapped, is that correct?

21 A I am sorry. Could I have that question again,  
22 please?

23 (Question read.)

24 A Yes.

25 Q Were you particularly and especially concerned

1 about the fact that this was a public phone?

2 A The fact that it was a public phone was one of  
3 the things I was concerned about, yes.

4 Q And what were your concerns about the fact that  
5 it was a public phone?

6 A Well, a variety of things. The fact that it  
7 was a public phone meant that a large number of people would  
8 intercept -- withdrawn. I am sorry.

9 A large number of people would be using the  
10 phone and therefore their conversations might be inter-  
11 cepted, that it would make it more difficult, particularly  
12 at an initial stage, to identify the voice of the in-  
13 dividual we had permission to intercept.

14 Q Only Detective Eaton had heard the voice of  
15 Joseph Della Valle under "adverse circumstances," is that  
16 correct?

17 A That's correct.

18 Q Do you remember when Detective Eaton told  
19 you he had overheard the voice of Joseph Della Valle?

20 A It would have been November 8th.

21 Q The date that he personally had heard Joseph  
22 Della Valle's voice, not when he referred the conver-  
23 sation to you.

24 A It would be the dates indicated in the affidavit,  
25

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Fishman-cross

2 which I believe are --

3 THE COURT: Don't look for them.

4 Q They are in the affidavit, during the month of  
5 October and the month of Novmeber, is that correct?

6 A That is correct.

7 Q Prior to your conversation with Detective  
8 Eaton?

9 A Yes.

10 Q Now, what did you do to secure a voice sample  
11 of Joseph Della Valle prior to going through all of the  
12 machinations of the preparation of papers?

13 THE COURT: Ask a good question. They are  
14 not machinations, they are procedures. Let's ask,  
15 you know, sort of simple questions.

16 Q Did you ask Detective Eaton or any of his  
17 detectives to do anything further with regard to  
18 attempting to identify the voice of Joseph Della Valle?

19 A We discussed, as I recall, whether that could  
20 be done.

21 Q And do you remember when you had that dis-  
22 cussion and what was said?

23 A We had a discussion some time between the 8th  
24 of November and the 8th of December, and I was satisfied  
25 that it could not be done safely.

1 12rda

Fishman-cross

2 Q Well, what did they say to you and what did you  
3 say to them?

4 A Well, I asked, among other things, whether --  
5 and I can't recall, obviously, exactly word for word,  
6 but I asked whether additional phone calls could be made,  
7 if there was any other way that the voice could be obtained,  
8 and they said basically no, it wouldn't be safe, it wouldn't  
9 be -- it wouldn't be safe primarily.

10 Q Did anybody suggest calling the home of  
11 Joseph Della Valle and speaking to him with regard to  
12 some innocuous circumstance or indicate a wrong number?

13 A I don't recall whether that was specifically  
14 discussed.

15 Q Well, would that be a method -- isn't that a  
16 police method for identifying voices?

17 A Conceivably might that have been a method, is  
18 that the question?

19 Q Wasn't that a method used at that time and  
20 presently for identifying voices, used by the police?

21 A I don't know of any instances myself where  
22 that's been done.

23 Q Now, have you tried any cases in which voice  
24 identification has come into play?

25 MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Are you familiar with the problem of voice identification?

A I am aware that it is a problem, an issue.

Q What suggestions did you offer prior to the signing of this order for the officers to be able to pick up the voice of Joseph Della Valle so they could distinguish it from the others that would speak on a tapped phone?

A To use their intelligence, their best efforts and their common sense and their good faith, is the only answer I can give you.

Q Prior to this order being signed did you give them any instructions in which you asked them to go out and attempt to capture, listen to, overhear or familiarize themselves with the voice of Joseph Della Valle? Yes or no.

A No.

Q The affidavit presented by Detective Eaton indicates -- I'm not testifying your Honor, but I think we can shorten it -- that Joseph Della Valle lived at 1475 Theroit Avenue, that he lived there with his mother and his brother, is that correct?

A No, that is not correct.

Q I show you paragraph 13 and ask you to refresh your recollection.

A Yes, it is correct that according to the information contained in that paragraph Joseph Della Valle and Mrs. Della Valle, the mother of Joseph, lived there, and that John Della Valle was currently in custody of the New York State penal institution. So at that point, while that might have been John's residence, it was not where he was living.

Q I see. Thank you, Mr. Fishman.

So at that period of time at the apartment lived Mrs. Della Valle, the mother, and Joseph, the son, who somew here along the affidavit turns out to be about 22 years old, is that correct?

A I'm taking your word for the age contained in the affidavit, but, yes, that's basically correct.

Q Did you have any reason to doubt the word of the statements in the affidavit?

A None whatsoever. I'm taking your word that that's what the affidavit says.

Q If it is not, I am sure Mr. Feffer will correct me.

As a matter of fact, isn't it true that Detective Eaton indicated to you that he had been conducting

1 15rda

Fishman-cross

2 investigation of Joseph Della Valle since September of  
3 1971, approximately two months before he even spoke to you,  
4 paragraph 34?

5 MR. FEFFER: Objection as to the relevancy  
6 of this question.

7 MR. SLOTNICK: I think it goes into the  
8 make-up of what eventually occurred, his understanding  
9 of what the detective knew, and what will follow is the  
10 fact that there was a lack of minimization which arose  
11 out of some of the things that occurred at the District  
12 Attorney's office.

13 THE COURT: But wouldn't we move along and  
14 perhaps be able to take Sunday off if you just assume  
15 that the things that are in the affidavit are before me  
16 and didn't retrace them with this lawyer and ask him to  
17 riffle through to paragraph 34? If you want him to  
18 have before him what paragraph 34 says, just tell him,  
19 and then ask a question.

20 MR. SLOTNICK: I am trying to do that but he  
21 is fighting me.

22 THE COURT: He is not fighting you. There  
23 has been an objection and I sustain it. I don't want  
24 you to ask any more questions that require him to riffle  
25 through and see what is in the affidavit. You may



1 16rda

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2 tell him and then put a question.

3 MR. SLOTNICK: Thank you, your Honor.

4 BY MR. SLOTNICK:

5 Q Pursuant to paragraph 34 of the affidavit  
6 Detective Eaton indicated to you that he had been  
7 investigating Joseph Della Valle since September of 1971,  
8 is that correct?

9 A That's correct.

10 Q And pursuant to the affidavit of paragraph 15  
11 he indicated that he had overheard his voice on at least  
12 two occasions, is that correct?

13 THE COURT: No, I don't want you to do  
14 that. Put him a question. Whether that's correct or  
15 not I know by looking at the affidavit.

16 Q Do you remember Detective Eaton telling you he  
17 had overheard Della Valle's voice on two occasions?

18 A Yes.

19 Q Do you know how many occasions that he had  
20 overheard his voice as a call was placed to Diane's Bar?

21 A Once.

22 Q And to his home?

23 A Once.

24 Q And the order eventually culminated on a tap  
25 in the bar and on the home?

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A Correct.

Q Partially based upon those two phone conversations?

A Correct.

Q What did Detective Eaton tell you about Della Valle's voice?

A I don't specifically recall how he described it.

Q Do you remember whether he indicated to you there was anything distinguishing about Della Valle's voice?

A I don't recall what he told me about that.

Q Do you remember anything that he told you about Della Valle's voice?

A That it was a male voice. I mean I don't even recall him telling me that. I don't recall him describing the voice or I don't recall what he told me about the voice.

Q Was it significant to you that the voice had to be picked up and the police officer didn't say much to you about the voice?

A I didn't say that they said much about the voice. I said I didn't recall what they told me about the voice.

Q You instructed them with regard to their pro-

cedure as to the wire tap, is that correct?

A Yes.

Q Did you indicate to the police officers that there was a penalty for disobedience to your instructions?

A Yes. I indicated there were two possible penalties, one was that evidence obtained over the wire tap might be suppressed and, second, that illegal eavesdropping was a crime.

Q They were aware of both of these things and you are sure you told it to both of them on more than one occasion?

MR. FEEFER: Objection as to the relevancy of whether he told them or not.

THE COURT: I will allow it.

A I know I told them that one penalty, so to speak, would be that evidence obtained over the eavesdropping line could be suppressed if they misused the warrant.

I believe I also mentioned to them that eavesdropping without court approval was a crime.

Q Now, there came a time when Justice Birns signed the order, is that correct?

A Yes, sir.

1           Q       And upon signing the order did you have these  
2                   conversations -- I'm talking about Exhibit A now --  
3                   or has it been transposed to 1, Exhibit 1 -- which is  
4                   the Diane's Bar No. 1 order, the first order which  
5                   was signed on December 8th -- when Judge Birns signed that  
6                   order did you have a conversation with him with regard to  
7                   notice and with regard to sealing the tapes at that  
8                   time?  
9

10           A       To this extent: to the extent that I told him  
11                   that it was the regular procedure of the New York City  
12                   DA's office that the tapes would be stored in the safe  
13                   of the Investigations Bureau. And he said that was  
14                   satisfactory. At that point we didn't discuss the  
15                   sealing or notice.

16           Q       You told that to him in December of 1971, is  
17                   that correct?

18           A       Yes.

19           Q       And you had no further discussion about any-  
20                   thing else with regard to notice or sealing?

21           A       I don't recall any.

22           Q       Now, this wire tap took effect on December 8,  
23                   1971, is that correct?

24           A       Yes.

25           Q       What responsibilities did you assume with regard

1 to this wire tap?

2  
3 A Well, since the wire tap authorized the  
4 district attorney of the County of New York, or any police  
5 officer acting under his directions, to execute the wire  
6 tap, and since I was the district attorney of the County  
7 of New York's agent, I assumed the responsibility of  
8 being kept up-to-date as to what was happening and I  
9 instructed the officers to keep me regularly informed.

10 I also instructed them that if a need for  
11 search warrants or other similar legal documents were re-  
12 quired, they were to contact me at any hour they could  
13 reach me, basically.

14 Q This was still your first and only wire tap at  
15 that time?

16 A Correct.

17 Q Did you have occasion to listen to the tapes?

18 A When in particular?  
19  
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2 Q When did you have occasion to listen to the  
3 tapes for the first time?

4 A I don't think I listened to any tapes in  
5 December and I don't know if I listened to any of the tapes  
6 in January. I might have, once or twice briefly.

7 Q Would your diary refresh your recollection?

8 A No.

9 Q Well, if you didn't listen to the tapes, did  
10 you undertake to read the logs?

11 A Well, I received copies of the transcripts  
12 and I think I also received copies of the logs.

13 Q When did you receive copies of transcripts?

14 A As I recall, the first time I received on paper  
15 copies of the transcripts was December 20, 1971. I had  
16 been kept informed by telephone or with one of the  
17 officers coming down beforehand telling me in effect:  
18 we have this, or we have that, or we are not sure about  
19 this.

20 Q So is it clear to state that prior to December  
21 20th of 1971 you had received not one sheaf of paper  
22 produced by these officers with regard to the wire taps?

23 A I couldn't say that for sure. I know that  
24 on December 20th I received, and there is a note to that  
25 effect in my diary, Detective Eaton came down and gave me

1 the transcripts through December 15th. So that was  
2 the first time I received transcripts, apparently.  
3 Whether I received other pieces of paper from them in  
4 the interim I couldn't say for sure.  
5

6 Q But you are sure you did not receive trans-  
7 cripts or logs; you may have received interim reports?

8 A To the best of my knowledge, that is correct.

9 Q Prior to the conversation of December 20, 1971,  
10 did you have a conversation with Detective Eaton, Roche,  
11 Martin, Mallard, or any of the other monitoring agents  
12 on the two wire taps, with regard to Joseph Della Valle's  
13 conversations, if you can remember?

14 A Well, I remember having conversations with  
15 officers acting on the investigation over the phone during  
16 that intervening week or week and a half. Specifically  
17 what they were about, they were about the eavesdrops,  
18 but specifically what was said to me I couldn't tell  
19 you.

20 Q Is there any aid that you could use which  
21 would refresh your recollection?

22 A Well, if I could answer your question using  
23 logic rather than recollection, I can answer it.

24 The affidavit that was submitted on January 6th  
25 contains conversations which were intercepted, for example,

1 3rda

Fishman-cross

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2 on December 11th at the bar, December 13th at the bar,  
3 December 15th. As I recall, I was being kept up-to-  
4 date. As I recall, I did discuss with them the fact  
5 that everybody was sick, that there were 30- and 60-second  
6 conversations consisting of "Gee, how are you feeling?"

7 "I'm sick."

8 "I'm sick, too."

9 "I'll call you again."

10 And discussion of what that might mean.

11 Q So before December 20, 1971, it now comes to  
12 mind that perhaps you did receive verbal reports of  
13 what the conversations were about?

14 A Oh, I know I received verbal reports about  
15 what was happening over the wire tap, yes.

16 Q When you say "everybody," do recollect who that  
17 everybody meant?

18 A By everybody who do you mean?

19 Q You said everybody was sick. Now, do you re-  
20 member who the officers meant when they said "everybody"?

21 A Well, specifically there was one person who  
22 seemed to be on the phone in the bar a lot who received  
23 one or more phone calls in which that person indicated  
24 he was sick and the person calling him indicated he was  
25 sick, and isn't it too bad, in substance.



1 4rda

Fishman-cross

2 Q Do you have that faint recollection of any other  
3 sick conversations?

4 A Well, I know there were a couple at least, maybe  
5 more. And that they were brought to my attention  
6 during that period of time between the 8th of December  
7 and the 20th.

8 Q Now, when you spoke to the officers with re-  
9 gard to the wire taps, did you speak to them generally  
10 about the two wire taps or did you zero in on each wire  
11 tap as they were occurring?

12 A You mean over the phone between the 8th and the  
13 20th?

14 Q Whatever communications you had with the  
15 officers.

16 A I know that when I spoke to them I asked what  
17 was happening on each telephone.

18 Q Do you remember what they told you?

19 A Well, I recall -- and again this is a combina-  
20 tion of what I recall and what I reconstruct, so I can't  
21 specify I am testifying from memory as opposed to what I  
22 have read in the affidavits --

23 Q In fairness to my questions, I would ask you  
24 to answer just what you recall without reconstructing.

25 A I can recall they kept me up-to-date as to what

1 Srda

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2 was happening. That's about the best answer I can  
3 give you.

4 Q Do you have any notes that you took with re-  
5 gard to your conversations with these detectives?

6 A During what period of time?

7 Q We are talking about everything up to December  
8 20th.

9 A If I can just look at the diary for a second.  
10 Between the 8th and the 20th?

11 Q Between the date the order was signed and the  
12 20th.

13 A Nothing between the 8th and the 20th of  
14 December in my diary, and I don't believe I have notes  
15 anywhere else.

16 Q You have nothing in the diary with regard to  
17 notes. Do you have any reports that you drew or that  
18 were given to you between the 8th and the 20th?

19 A I don't believe so, no.

20 Q And between the 8th and the 20th you were  
21 actively engaged being a district attorney in New York County  
22 on other matters?

23 A I had other duties.

24 Q Did you work in the court, in a part?

25 MR. FEEFER: Is it necessary to find out where

1 6rda

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2 he worked if he testified he had other duties? Does  
3 that have any relevance at all to this hearing?

4 THE COURT: Not much.

5 MR. SLOTNICK: I think it does, your Honor.  
6 Because one of the things --

7 THE COURT: Are you suggesting that law  
8 enforcement people have to assign a full-time lawyer to  
9 the supervision of a minimization of a wire tap?

10 MR. SLOTNICK: I am suggesting that Mr. Fish-  
11 man was very busy and perhaps too busy to supervise  
12 this wire tap.

13 THE COURT: I assume that's what you are  
14 suggesting and I will allow you to ask the question.

15 A I spent some time in the office during that  
16 period of time, I spent some time in court. I was not  
17 on trial that I can recall, at least not a jury trial,  
18 at that time. And I spent some time carrying out other  
19 duties.

20 Q And those are reflected in your diary?

21 A Some of them are. I am sure some of them  
22 aren't. I don't keep a second-by-second record of  
23 what I do.

24 Q Now, when you spoke to Detective Eaton on the  
25 20th, do you recollect where that conversation took place?

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Fishman-cross

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A It was in my office at 155 Leonard Street.

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Q And to the best as you recollect, what did he say to you and what did you say to him?

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A He had typewritten transcripts of the conversations from the first day conversations were intercepted, which I believe was the 9th or 10th of December, through December 15th. He went over the transcripts with me. He discussed with me which voices that -- as far as he could tell, which voices were the same in several conversations. He discussed the fact that -- and I am exaggerating slightly. Everybody had nicknames and everybody had apparently more than one nickname. It was very difficult to figure out who was talking from one conversation to the next except by voice identification.

17

18

Q By the way, we are discussing both wire taps, am I correct?

19

20

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MR. FEFFER: Objection, your Honor. No relevancy at all, what was happening at Theriot Avenue.

MR. SLOTNICK: It certainly does, your Honor. One of the things that I will get to in a moment, if your Honor allows me, will be the relevancy of Theriot Avenue to the bar. What I am asking about the conversations he had with Eaton, why should we assume

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he is discussing -- why should I make the assumption he is discussing two when he is actually discussing one?

THE COURT: I will allow it.

A I'm not sure I had finished the answer that I was giving before you asked that question.

THE WITNESS: Could you read back the last one or two questions, please.

(Record read.)

A Can I complete my answer to the other question before I get to this question?

Q Yes.

A He also told me about the conversations which had been intercepted on December 19th at which Joseph Della Valle had a conversation with a female named Dotty, and then with a male named King, and that during that conversation Della Valle had apparently turned away from the phone -- this is what he could gather from listening to the tape or conversation -- and said, "How late are you going to be here, Beans?" or words to that effect. And that for the first time that conversation demonstrated that Beans, who was one of the people whose conversations had been intercepted on a number of occasions, and Della Valle were not the same person. To the best that I can recall, that is what we discussed

on the 20th.

I know we also discussed, now that we know that Beans and Della Valle are two different people, what do we do? I told him, "Let's try to find out who Beans is and we can work on amending the order to continue to bring to the judge who had issued the order the fact we had another individual identified, Beans, who was apparently engaged in narcotics negotiations over the telephone." That's what I remember at this point. You may be able to jog my memory by further questions.

Q The second point about whether two wire taps were discussed and whether you received logs of both wire taps and whether you received transcripts of both wire taps, do you recollect that?

A My best assessment of the situation was that I was also told something about the Theriot Avenue wire tap but I don't specifically recall what I was told. I know that at one point evidence was developed or obtained over that wire tap that indicated that there was some involvement between Joseph and another individual perhaps engaged in illegal activities involving a state correctional facility but I don't recall specifically the date that was intercepted or when I was told about it.

Q And it was your understanding that Detective

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2 Eaton had been at both plants, an I correct, during the  
3 period of time up to the 20th?

4 A I don't recall if it was specifically dis-  
5 cussed whether or not he had been.

6 Q Well, did he tell you that he had heard the  
7 tapes of both plants?

8 A Either that he had or that he had discussed  
9 that was going on at both plants with officers of each  
10 plant.

11 Q You asked him that question, hadn't you, whether  
12 he listened to the tapes of Theriot Avenue the bar and  
13 grill?

14 A I don't recall asking him that question specif-  
15 cally.

16 Q Do you recall asking him if he was reading the  
17 logs of Theriot Avenue and the logs of the bar and  
18 grill, if you remember?

19 A I don't recall the specific conversation to that  
20 effect, no.

21 Q Did you ask him whether he was reading the  
22 transcripts of Theriot Avenue and the transcripts of the  
23 bar and grill?

24 A Maybe I can answer you this way: One of  
25 Detective Eaton's jobs, as well as the job of anyone

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2 else working the plants, was to keep me up to date, and  
3 they did. That's the best way I can answer the ques-  
4 tion.

5 Q Well, to your mind, was Detective Eaton the de-  
6 tective in charge of the operation?

7 A I don't know if you could say that any detec-  
8 tive was in charge of the operation.

9 Q If you had to look for a detective and ask him  
10 a question about this operation, which detective would  
11 you single out in your own mind?

12 A Detective Eaton.

13 Q Now --

14 A If I can clarify that slightly. He was the  
15 person I had worked most closely with. He was the  
16 person I got my information from. If I wanted further  
17 information he didn't have, he'd be the person I'd ask  
18 to get it for me. To that extent, Eaton was the one I  
19 went to more than other members of the investigative team.  
20 I did have conversations with others also.

21 Q He was the man you supervised the closest and  
22 I guess it was apparent to everybody that you and Eaton  
23 were in closer contact, is that correct?

24 A We were in contact more than other members of  
25 the team. To say I supervised more closely, I don't think



1 that is an accurate way of putting it.

2 Q Now, on the 20th, when he told you he was  
3 listening to two different people, I guess he told you  
4 he was doing that rather consistently, do you remember  
5 that?  
6

7 A I don't understand your question.

8 Q On the 20th did he tell you that he was listen-  
9 ing to two different people?

10 A He told me that a number of people's conversa-  
11 tions had been intercepted.

12 Q Didn't he tell you that he was listening to  
13 Della Valle, Beans and Steve and these were actually two  
14 different people instead of one individual?

15 A It was the conversation of the 19th which told  
16 him definitely that Beans and Steve were apparently one  
17 person and Della Valle was a second person.

18 Q But did he tell you that prior to this conver-  
19 sation who he was zeroing in on on that wire tap and who  
20 he was listening to?

21 A Well, he went over the transcripts with me, the  
22 transcripts that had been intercepted -- withdrawn --  
23 the transcripts of conversations intercepted from the  
24 first day to the 15th.

25 As I recall, the transcripts might have had

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2 Shadow as one of the participants of the conversation,  
3 it might have had Beans as a participant, it might have  
4 Stevie, it might have -- I don't recall, but Hooks might  
5 have appeared.

6 There was some discussion as to do we have  
7 any idea who these people are, and we didn't have them  
8 identified by name.

9 Q You are talking about the transcripts over the  
10 bar?

11 A Yes.

12 Q Were there any problems with the transcripts  
13 over at Theriot Avenue?

14 A Well, as I recall, we learned that Joseph Della  
15 Valle apparently had had at least one, two or more nick-  
16 names. I can't say for sure that I was told this on  
17 December 20th as opposed to before or after, but that Della  
18 Valle also apparently used the name Buster, apparently  
19 used the name Jimmy, and other names.

20 Q That's what you were told?

21 A Yes.

22 Q Has anyone to this date --

23 A I don't recall whether it was Buster or Blackie.  
24 I know John Della Valle used one of those names and Jo-  
25 but which was which not clear. In

fact, I think Blackie was Joseph.

Q Has anyone told you to date whether they had difficulty identifying the individual Joseph Della Valle, the subject of your order of December 8th, at Theriot Avenue?

A I don't specifically recall being told that.

Q Did you ever ask anybody?

A I don't know. I don't recall.

Q On December 20th, when Detective Eaton said he had difficulty, did you ask him to bring in the tapes of Theriot Avenue so that you might listen to the lone male living in that apartment with his mother?

A I'm not sure I can accept the entire premise of your question but my basic answer would be no.

Q Can you answer the question yes or no?

A Basically my answer would be no.

Q On December 20th you told him, "Keep on listening. We will develop it further," is that correct?

A Now, what specifically are you asking about.

Q On December 20th did you advise Detective Eaton to continue listening to the equivocation -- withdrawn; at this point there is no equivocation -- to the other individual? And we will work on it further. Is that

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what you told him?

A As I recall looking at the CPL for --

Q What did you tell him?

A -- for guidance and I told him to continue to listen to Steve or Beans' conversations to the extent that by voice they could be distinguished from Joseph Della Valle's and that we would be working as quickly as possible on amending the warrant so that we could intercept -- have court authority to intercept Stephen Dellacava's -- I didn't know his name at that point -- conversations as well.

Q That's the advice you gave to Eaton?

A Yes. And to give me informed or a more frequent basis as to what was happening.

Q Mr. Fishman, when did the first Diane's Bar order run out?

A I believe either January 5th or 6th or 7th -- 6th.

Q When was the second Diane's Bar order applied for and when did it commence?

A We went to Mr. Hogan and to the judge on January 6th. It was issued on the 6th and it began on the 6th of January.

Q Had an order not been signed on the 6th, legally

1 16rda

Fishman-cross

2 all interception would have had to stop?

3 A It would have terminated midnight on the 6th.

4 Q At any time prior to the 20th and midnight of  
5 the 5th did you make an application to a judge, to Mr.  
6 Hogan -- not to Mr. Hogan but to a judge in the  
7 State Supreme Court and asked for an extension of this  
8 eavesdropping to include another named individual?

9 A Did I walk into a judge's chambers with the  
10 papers? No, I did not.

11 Q Did you ask any judge?

12 A I don't think I had any conversation with the  
13 judge about that, no.

14 Q As a matter of fact, you are aware that even  
15 though you do not know the full name of an individual,  
16 that you can obtain an eavesdropping warrant against a  
17 John Doe, is that correct? Yes or no.

18 A I am aware of it now. I imagine I was aware  
19 then.

20 Q Isn't that a matter of fact, that in the summer  
21 of '72 that that's part of what you discussed, that a John  
22 Doe warrant can be gotten against a specific individual?

23 A Yes, sir.

24 Q Isn't it a matter of fact on December 20th you  
25 were aware of the fact you didn't have to know the full

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2 name, address, pedigree or any of those facts of an  
3 individual whom you wanted to be the subject of an  
4 eavesdropping warrant?

5 A I'm not sure I knew that then. As I said,  
6 I was new, n-e-w this time, at supervising eavesdropping  
7 warrants. I wanted to make sure I had touched every  
8 base, consulted with other people in my office, and I  
9 wasn't leading the officers astray. They were relying  
10 on me for legal advice and I wanted to make sure every  
11 way I could that that advice was proper.

12 Q You know that today, correct?

13 A I've done that. On that basis I assume it  
14 is okay.

15 Q And you are familiar with eavesdropping procedure  
16 today, is that correct?

17 A Some aspects of it, certainly.

18 Q You are familiar with the Second Circuit in  
19 Tortorella, a little decision that has come down recently --

20 MR. FEFFER: Objection to that, your Honor.

21 THE COURT: Sustained.

22 Q Now, Mr. Fishman, your statement on direct, if  
23 I am correct, was that what is encompassed in the memorandum  
24 of December of '72 is what you told the officers in December  
25 of '71?

1 A I don't believe that's what I said. I think  
2 what I said, what I told the officers in December of '71  
3 is included in the memorandum that I gave them in the sum-  
4 mer of '72. I can explain a distinction or two if you  
5 would like.  
6

7 Q Now, on December 21st did you have a conver-  
8 sation with Eaton?

9 A Yes, I did.

10 Q And what was that conversation about?

11 A Well, he told me what else had happened on the  
12 tap or taps after December 20th, after he had spoken to  
13 me the day before, and I told him that I had begun to go  
14 through the transcripts to prepare the necessary affidavits  
15 and order to amend the eavesdropping warrant on Diane's  
16 Bar to include Beansie or Steve or this individual whom  
17 we hoped to further identify.

18 Q When you saw you had begun to, what did you  
19 do exactly?

20 A I can't give you a minute-by-minute breakdown.

21 Q I don't want a minute-by-minute breakdown.  
22 What did you do?

23 A To the best that I can tell you, and I am re-  
24 constructing rather than recalling, I had gone --

25 Q Are you reconstructing from your diary?

1           A       No, just what I know now about what happened  
2  
3 then.

4           Q       Please don't guess. Recall or reconstruct  
5 from some memory aid but don't guess.

6           A       I discussed with other assistant DAs or men  
7 with more experience what you need to amend an eavesdropping  
8 warrant, to add other people, other times. I discussed  
9 with other assistant DAs, read over the transcripts to  
10 become more familiar with the material that would perhaps  
11 be included in such an affidavit.

12          Q       Now, you had this discussion --

13          THE COURT: Mr. Slotnick, we are about to stop  
14 for lunch. Do you want another question or two?

15          MR. SLOTNICK: No, your Honor.

16          MR. FEFFER: I have obtained the original  
17 logs at Theriot Avenue. I would like to substitute these  
18 for what is presently marked 1C.

19          MR. SLOTNICK: No objection.

20          THE COURT: All right, 2:15.

21          (Luncheon recess taken.)  
22  
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AFTERNOON SESSION

2:15

(In chambers)

THE COURT: Put it on the record. On a discussion that everybody agreed should be off the record because we couldn't figure any way to make any errors, we agreed to switch our Saturday sitting to Sunday, 10 a.m.

Does anybody think I need to have the incarcerated defendants here?

MR. PANZER: I don't think so. My client is not incarcerated but he's not affected by these taps, not at this point.

MR. SLOTNICK: I think it's clear that only three defendants are affected by these taps.

THE COURT: I don't know that we need the others here at all from now on.

Make your phone call and let Mr. Swanzinger know when you are ready.

(In open court)

THE COURT: In a robind room discussion it was agreed that we will sit Sunday instead of Saturday. I was made to think very briefly about a question that I hadn't paid any attention to but which sort of becomes

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2 germane in light of the Sunday session, and that is the  
3 presence of other defendants at this hearing, and  
4 particularly those who are in confinement. It brings  
5 pointedly to my mind that the only thing I am currently  
6 hearing is a motion by three defendants, Capra, Guarino  
7 and Della Cava, and that of course everybody else is  
8 welcome to be here, but I can see no necessity for having  
9 people like Mr. Harris, Mr. Morris and others, called back  
10 and forth from West Street and kept here for a hearing which  
11 absolutely is of no concern to them except as their counsel  
12 may want to be apprised of the record.

13 I also am not sure to what extent we could  
14 justify under the Criminal Justice Act having ably assigned  
15 lawyers sitting around here for full court days listening  
16 to a motion that doesn't concern them, even though some of  
17 the efforts of their professional colleagues are educational  
18 and interesting.

19 Mr. Panzer, you don't represent an incarcerated  
20 defendant but you are holding a watching brief, I take  
21 it, for a couple of your brethren at this moment.

22 MR. PANZER: Right.

23 THE COURT: Do you know of any reason why  
24 other defendants not affected by this motion should be  
25 required to be here?

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2 MR. PANZER: I don't see any reason, your  
3 Honor.

4 THE COURT: Then I direct the marshal to  
5 cease bringing to these hearings any defendant other than those  
6 now involved and I will direct that they be returned to  
7 West Street now.

8 All right, let's proceed, Mr. Slotnick.

9  
10 CLIFFORD SCOTT FISHMAN resumes.

11 CROSS-EXAMINATION CONTINUED

12 BY MR. SLOTNICK:

13 Q With regard to Exhibit 1A, which is the  
14 order of December 8, 1971, you drew that order, correct?

15 A That is correct.

16 Q And it's obvious that on the caption, the dia-  
17 critical paragraph was to listen to the conversations of  
18 Joseph Della Valle, is that correct?

19 A That is correct.

20 Q Does that order give you authority to listen  
21 to anyone else other than Joseph Della Valle?

22 A The language in the caption is Joseph Della  
23 Valle, co-conspirators and agents.

24 Q What about the diacritical paragraph?

25 A Conversations of Joseph Della Valle.

1  
2 Q You had authority on December 8 to only listen  
3 to Joseph Della Valle with others, is that correct?

4 A That is what the order says.

5 Q Are you aware of the fact that prior to  
6 December 20 Joseph Della Valle -- withdrawn.

7 your office has reported that Joseph Della  
8 Vale never spoke to Steve or Beansy on the telephone?  
9 Obviously if they thought he was one and the same person.

10 A As far as I know, they had intercepted no  
11 conversations between Della Valle and Beans or Steve.

12 Q So on December 20 you were aware of the fact  
13 that there was no course of conversations between  
14 Joseph Della Valle and Beans and/or Steve? There  
15 couldn't have been, right?

16 A There couldn't have been in which Beans or  
17 Steve was identified by either of those two names, sir.

18 Q There couldn't be with the voice they  
19 identified as Joseph Della Valle because they had heard  
20 his voice countless times, is that correct?

21 A Whose voice countless times?

22 Q The voice of the individual that they later  
23 identified to be Steve and/or Beans.

24 A They heard it a number of times, that voice a  
25 number of times, yes.

1  
2 Q By the way, prior to your sending -- withdrawn.

3 Prior to your handing the officers this order  
4 and saying you got a judge's signature, had anybody  
5 informed you whether Joseph Della Valle had an interest in the  
6 bar or was constantly on the phone or answered the phone?

7 A I knew a number of observations had been made in  
8 which Della Valle was in the vicinity of the bar or his  
9 car was parked outside the bar. I knew through Detective  
10 Eaton on the information that Eaton had obtained from the  
11 informant about Della Valle's presence in or use of the  
12 bar.

13 Q But you had no knowledge that Della Valle would  
14 pick up the telephone every time or almost every time it  
15 rang for incoming calls?

16 A That's correct.

17 Q You also had no knowledge that Della Valle ever  
18 made an outgoing call on that phone, is that correct?

19 A I believe that is correct.

20 Q So therefore on December 20 you had no  
21 knowledge -- withdrawn.

22 You had no authorization to listen to anyone  
23 other than people engrossed in conversation with Joseph  
24 Della Valle pursuant to this order, is that correct?

25 A If your use of the word "you" is to include

the offers, okay.

Q Giglio says there is one government.

A My understanding is that the officer monitoring the wiretap had authority to execute this eavesdropping order as best they could exercising good faith, and to do the best to intercept only the conversations of Joseph Della Valle as related to narcotics. But giving the difficulties in defining his voice, etc., giving all sorts of difficulty in monitoring any telephone, they did as much leniency as good faith and intelligence would allow them to exercise.

Q Was that your understanding at that time?

A Yes.

Q On December 20 when you were told that the officers were listening to an individual who was not Joseph Della Valle, who was not engrossed in conversation with Joseph Della Valle on the telephone, you told them to continue to listen. Is that correct?

A Absolutely.

Q Even though you had an order that gave you the power and authority to listen to conversations of Joseph Della Valle with others, is that correct?

A Yes, because I had such an order and I had the criminal procedure law which elaborated procedures to

1 follow should an amendment be sought.

2 Q And at any time prior to the expiration date  
3 of January 6, 1972, was an amendment obtained?

4 A As I said, I started preparing the amendment on  
5 the 21st of December. I did most of the typing of all  
6 of the affidavits and the warranty myself. I was also  
7 on trial. I conferred on a number of occasions with  
8 other senior members of the New York County District  
9 Attorney's office. I tell you January 6, 1972, was the  
10 earliest possible date to get this order before the  
11 judge.  
12

13 Q And in the interim you told your detectives,  
14 continue listening even though we only have this order?

15 A That's correct.

16 Q You didn't tell them stop listening until I  
17 get an order amending --

18 THE COURT: Mr. Slotnick, let's proceed.

19 MR. SLOTNICK: I'm sorry, your Honor. I  
20 will withdraw it.

21 Q By the way, did you tell Judge Birns at any  
22 time that the public phone -- withdrawn. That there  
23 was a public phone at 2034 Second Avenue?

24 A I don't recall if we used the word public  
25 phone. I know the caption of the warranty says the phone

rdr8

Fishman-cross

in a bar and grill.

Q Did you anyplace in your order indicate to Judge Birns or to any ex parte conversation that there was difficulty with regard to Detective Eaton's recognizing the voice of Joseph Della Valle?

A The affidavit contains the fact that Detective Eaton was able to overhear two conversations of Joseph Della Valle. I believe the affidavit also indicates that the telephone calls were made -- it does not say in so many words, but indicates the telephone calls were made from a street phone. I was present at 50th Street and Lexington Avenue --

THE COURT: Doesn't the affidavit describe the phone in question as a pay telephone?

THE WITNESS: It may, your Honor.

MR. SLOTNICK: If it does, your Honor -- no, it doesn't.

MR. FEPPER: Yes, it does. Paragraph 10 of the Eaton Affidavit, page 5 of that affidavit or 9 of this sheaf of papers.

MR. SLOTNICK: I'm talking now about the phone at 50th Street and Lexington Avenue. I think that is what we are getting to now, where he overheard Della Vallue. I've asked him whether he informed Judge



rdr9

Fishman-cross

Birns that there was difficulty -- I believe the term was adverse conditions in overhearing the voice of Joseph Della Valle.

THE COURT: The one where he overheard, you were asking now about the one on which the order was obtained?

MR. SLOTNICK: I did. That was about four questions back.

THE COURT: You asked was Judge Birns informed that was a public telephone.

MR. SLOTNICK: That is correct.  
I see your Honor has pinpointed it.

THE COURT: Pinpointed so that you didn't need to ask it and get an incorrect answer. That's why I don't want you to keep going over this affidavit and getting this witness two years later to misremember what was in the affidavit that Judge Birns read. I direct you to stop it.

MR. SLOTNICK: I certainly will, your Honor.  
May I just ask the witness a few questions with regard to when was the last time he read these affidavits?

THE COURT: No, I don't care when he read them. You are just not helping me. Now you have gone over the line to unhelping me and getting me incorrect

1 information about what was before Judge Birns because you  
2 are asking thisman to ad lib about an affidavit that I  
3 must presume Judge Birns read, if anything was before  
4 him. I want you to be careful about this.  
5

6 MR. SLOTNICK: I will, your Honor.

7 Q Is there anything in the affidavit to indicate  
8 that --

9 THE COURT: I don't want you to ask him  
10 whether there is anything in the affidavit to indicate  
11 this and that. Now, Mr. Slotnick, you have a right to  
12 disagree with me, and much of the time when you disagree  
13 with me, you are going to turn out to be correct. But you  
14 are going to have to live with me as if that were not so  
15 and you are going to have to follow my rulings. Pay  
16 attention to them and follow them.

17 MR. SLOTNICK: I have, your Honor, and I  
18 have listened to your instructions and I will have to  
19 ask the following question and I may do it at my peril  
20 but I think it's within the limot of your instructions.

21 Q Did you indicate or do you know if anybody  
22 indicated to Judge Birns prior to his signing this  
23 eavesdropping warrant, referring to the Diane's Bar  
24 one warrant, that there was a problem with regard to  
25 Detective Eaton's recognizing the voice of Joseph Della Valle,

1 rdrll

Fishman-cross

818

2 the subject of the order?

3 A Yes, to this extent: The affidavit contains  
4 the two conversations that the informant made to Mr.  
5 Dalla Valle. It contains the brevity of the conversations  
6 and indicate these were conversations which were overheard  
7 by Detective Eaton, although it was someone else who  
8 made the phone call.

9 THE COURT: It indicates by inference that the  
10 calls were made from a street telephone. So by inference  
11 I would say that Justice Birns -- that the affidavit con-  
12 tains the inference that voice identification might be a  
13 problem, yes.

14 Q It specifically does not.

15 I know your Honor will read the affidavit and  
16 I will abbreviate my questioning on that basis.

17 A I do not recall myself what Detective Eaton  
18 said or that he said, Judge, we are going to have a problem  
19 identifying his voice.

20 Q Paragraphs 14 and 15 of the order refer to  
21 the conversations we are talking about, is that correct?

22 A Yes. There may be other references to those  
23 conversations elsewhere in the affidavit.

24 Q But in that one order.

25 Now, Mr. Fishman, did there come a time when

1  
2 you had a conversation with Detective Eaton -- withdrawn --

3 What was the first conversation you had with  
4 Detective Eaton past December 20, 1971?

5 A As I said, my conversations with Eaton were  
6 on a virtually daily basis. I have a specific reference  
7 that I spoke to Eaton on the 21st in my diary and another  
8 that I spoke to Eaton on the 24th. Yes, I spoke to Sgt.  
9 MacDonald on the 24th. I don't know whether I spoke to  
10 Eaton as well on that date.

11 Q You spoke to Eaton on the 21st?

12 A Yes, sir.

13 Q Did he tell you he was still listening to  
14 Beansy, Steve, who was not Della Valle?

15 A I don't know whether he told me that or not. I  
16 had told him on the 20th that he and other members of the  
17 team could. So I assume that they were.

18 Q Do you also recollect that they had indicated  
19 to you that they had heard only one conversation of  
20 Joseph Della Valle from the inception of the tap to the  
21 date of December 20th, if you remember?

22 A They may have told me that there was only one  
23 conversation they could definitely say was Joseph  
24 Della Valle.

25 Q As a matter of fact, you reviewed the logs

1 rdrl3

Fishman-cross

2 and transcripts up to the 15th. Is that correct?

3 A Transcripts I know I reviewed. I don't recall  
4 how extensively I reviewed the log.

5 Q I indicate to you that the logs and the trans-  
6 cripts of the 15th there is no one conversation identified  
7 as that of Joseph Della Valle, would that refresh your  
8 recollection?

9 A I will accept that as fact. Whether any --  
10 whether those unidentified males had been excluded from  
11 the possibility of being Joseph Della Vallue at that time  
12 I couldn't tell you.

13 Q Did you also receive the T hieriot Avenue  
14 logs and transcripts?

15 A I know I was kept informed about what was  
16 happening there. I don't recall if I received logs from  
17 there. I believe I did receive some transcripts from  
18 there.

19 Q On the 21st did you ask to listen to any tape  
20 recordings?

21 A No, I didn't.

22 Q Dating from the period of your supervision  
23 did you listen to tape recordings?

24 A I may have during the tail end of January,  
25 early February. I don't believe I listened to any of the

recordings during the life of the first Diane's Bar wire-tap.

Q Were you satisfied in your own mind prior to submitting the first order to Judge Birns that Detective Eaton knew what Joseph Della Valle looked like?

MR. FEFFER: Objection, your Honor.

THE COURT: I'll allow it.

A I don't know that I gave it that much thought, but, yes, I was satisfied that he knew what Della Valle looked like to the extent that he had observed him, as he observed him.

Q Well, couldn't you then, armed with this belief, have directed the police officers prior to the receipt of this order to have called the bar and grill, had a police officer stationed at the bar, ask for Joseph Della Valle and observe what occurred to see who the gentleman was that approached and also to record the voice on the other end pursuant to consent of the calling officer.

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained. If you want to argue the things your imagination produces, tell me about that. But I don't want that to be a subject of testimony.

Q Isn't it also true -- withdrawn.

1 rdr15

Fishman-cross

2 You stated that your satisfaction that Della  
3 Valle was there or around the bar came from the information  
4 that Eaton gave you that he had seen Della Valle's automo-  
5 bile and that he had seen Della Valle at a certain time  
6 in around the bar, is that correct?

7 A Information from Eaton, through officers,  
8 information from Eaton through the informer, yes. It's  
9 in the affidavit.

10 Q It's also true that in the affidavit that many  
11 days Eaton passed the bar and did not see Della Valle  
12 nor his car.

13 MR. FEFFER: Objection, your Honor.

14 THE COURT: Sustained.

15 Q By the way, prior to the 21st had anyone  
16 told you about the existence of a John Capra?

17 A I don't think so, no.

18 MR. SLOTNICK: No further questions, your  
19 Honor.

20 MR. MC ALEVY: Just one moment, your Honor,  
21 please.

22 (Defense counsel confer)

23 CROSS-EXAMINATION

24 BY MR. MC ALEVY:

25 Q Mr. Fishman, I believe you testified this morning

1 rdlr16

Fishman-cross

2 in response to a question by the Assistant United States  
3 Attorney that Eaton had informed you there was difficulty  
4 in establishing the voice of Joseph Della Valle, is that  
5 correct?

6 A We discussed the conditions under which Eaton  
7 had been able to hear that voice twice and we knew that  
8 that would be a problem, yes.

9 Q Now, Mr. Fishman, is there any report or  
10 record that you have, either made by yourself or by Detective  
11 Eaton, at any time which states that fact or something  
12 similar to that?

13 A Not tha I can think of, no.

14 Q In other words, you just, from your own  
15 memory now, some two years later you happen to recall  
16 that particular event?

17 A What particular event now?

18 Q The event that there was trouble establishing  
19 the voice of Joseph Della Valle.

20 A Definitely. I definitely recall we discussed  
21 that.

22 Q You testified you typed most of these affi-  
23 davits yourself?

24 A I probably did at least half of the typing  
25 of the orders and affidavits you see before you.



1  
2 Q With respect to Detective Eaton's affidavit,  
3 did you type that affidavit?

4 A I typed portions of it. Typists in the office  
5 typed portions of it, and Detective Eaton might have also  
6 typed portions of it.

7 Q In any event, you certainly went over that  
8 affidavit with Detective Eaton, did you not?

9 A Yes.

10 Q There is no mention in the affidavit about  
11 Detective Eaton having any difficulty with the voice of  
12 Joseph Della Valle?

13 MR. FEFFER: Objection, your Honor.

14 THE COURT: Were you listening to any of my  
15 conversation with Mr. Slotnick, Mr. McAlevy?

16 MR. MC ALEVY: Yes, I was, your Honor.

17 THE COURT: Will you follow that.

18 Objection sustained.

19 Q Did you instruct which officer to be at which  
20 plants?

21 A No.

22 Q Did you have knowledge of which officers were  
23 at particular plants?

24 A Did I have their advance work schedule? No,  
25 I didn't.

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Q You would discuss this case with Mr. Eaton a number of times during the week?

A Yes, with Detective Eaton and with other officers in the case, yes.

Q But --

A Eaton mostly.

Q But Eaton was your main man, so to speak, was he not, with respect to this investigation?

A Yes.

Q Now, did you yourself make any notes of your conversations with Mr. Eaton?

A Occasionally I would note in my diary that he called. At one point I noted in my diary "Eaton here, went over transcripts until 12:15."

I believe that's the note I have on the 20th. You are talking after the wiretap went into effect?

Q Yes. I'm talking from December 8 on. Can you tell me what your first notation is with respect to a conversation with Mr. Eaton in your diary?

A The first notation that I have is on December 20, and it says, "Eaton in 2:45 to 3:30 with transcripts 12/15."

Q But you testified that you had other conversations with him from the 8th to the 20th, did you not?

rdrl9

Fishman-cross

A Correct.

Q But you don't have any other written --  
anything else actually written down with respect to any  
conversations?

A That's correct.

Q Now, can you recall how many of these conver-  
sations took place in your office?

A I think there were almost exclusively over the  
telephone until the 20th. Either I would call the plant  
and say what's happening. If it was Eaton he would tell  
me. If it wasn't Eaton they would wait until they knew  
my voice, and that sort of thing.

Q Did you give any instructions whatsoever to  
either Eaton or any other officer between the 8th and the  
20th with respect to overhearing conversations of persons  
not named in the order?

A Instructions between the 8th and the 20th?

Q Yes.

A I don't specifically recall doing so, no.

Q The instructions that you had reduced to writing  
and gave to the police officers in this case at some later  
date -- I'm not sure of the number of the exhibit.

A 7.

MR. SLOTNICK: 3.

rdr20

Fishman-cross

Q Number 3, when was that given, sir?

A It was given in the summer of 1972. I could probably track down the approximate date for you if you would like.

Q Somewhere in the summer of '72?

A Late spring, summer, something like that.

Q I believe you testified that some of the instructions that you had given Detective Eaton and the other officers were encompassed in those instructions that you reduced to writing in the summer of '72, is that correct?

A That's correct.

Q Which ones?

A Well, the description of the four classes of privileged conversations, which is in the writing, is also part of what I gave him. Let me put it this way: "Could you pick out from Exhibit 3 the things that I did not tell, if you would like me to do it that way. That might be easier.

For example, I did not go into a discussion with him then about the fact that one of our subsequent talks to his girlfriend about personal matters but also matters dealing with narcotics. We didn't know he had a girlfriend then. I did not give them as elaborate instructions in December about spot monitoring, about turning the machine on and off. It was just turn it off if the

1 conversation was not the type of conversation covered by  
2 the warrant. Those are two distinctions that come  
3 immediately to mind that I did not tell them in December  
4 which I included in the written memorandum.  
5

6 Q Can you think of others, sir?

7 A Not off hand. If I saw Exhibit 3, as I  
8 said, I might be able to point out others.  
9

10 Q You never heard any tapes that you can recall  
11 until sometime in late January '72 or February '72, is that  
12 right?

13 A That is correct, sometime in January or Febru-  
14 ary.

15 Q But you did see transcripts and logs con-  
16 cerning the first Diane's Bar order?

17 A Correct.

18 Q Did you start seeing those logs the first  
19 week?

20 A The first time I can recall receiving anything  
21 in writing from the officer was December 20.

22 Q I see. So that I take it you never  
23 instructed Detective Eaton or any of the other officers  
24 to furnish you with logs as soon as they were available?

25 A I had asked Lt. Hill, as I recall, and  
Detective Eaton if I could be given daily copy, in effect.

1 rdr22

Fishman-cross

2 Because of the manpower problems they had, the low number of  
3 men they had to monitor these two plants to conduct  
4 surveillance, etc., they asked if they could bring it to  
5 me on a once a week basis, keep me informed orally in  
6 the interim as to what happened and I said that would  
7 be all right.

8 Q So, in other words, you never recall seeing  
9 any logs or transcripts until at least December 20?

10 A That's correct.

11 Q So that when you were discussing -- strike  
12 that.

13 Can you approximate how many conversations  
14 you had with the officers between the 8th and the 20th  
15 concerning the taps at either Diane's Bar or Mr. Della  
16 Valle's home in the Bronx?--

17 A Between the 8th and the 20th?

18 Q Yes.

19 A I guess it would be at least, and it's a  
20 guess, at least three or four and perhaps more.

21 Q And I take it that out of those three or four  
22 that you can recall, Detective Eaton was the person  
23 talking to you on at least one of those occasions?

24 A Yes.

25 Q And then your testimony is that Detective

rdr23

Fishman-cross

Eaton came down to your office and discussed this question with respect to Beansy and Steve and Della Valle personally with you?

A On the 20th, yes.

Q Did he discuss that with you prior to coming down to see you?

A I had been told that there was a guy named Beansy or Stevie or could be one or more people.

Q By whom were you told that?

A I can only hypothesize that it was Eaton.

Q When was that?

A As I said, during the intervening ten days from the time the wiretap was turned on, and the 20th. I know that I worked nights during most of the period in between. I had come into the office in the afternoon also on several of those days and I am hypothesizing that it's on those days I had conversations, because I know I did have conversations with the officers about it. The specific day I couldn't tell you.

Q Mr. Fishman, if you know, would you tell me when these officers made the particular logs with respect to the bar?

A As the phone call came in. That's an assumption on my part.

rdr24

Fishman-cross

Q Did you give them any instructions with respect to logs?

A I told them to write down whatever happened in effect. But specifically what instructions I gave, how elaborate I really do not recall.

Q When you told him to write these things down, you told them to write them down as they heard them as the calls were actually being made, did you not?

A I don't recall specifically what instructions I gave them as to what to do other than how to monitor the eavesdropping and how to use the tape recorder. The actual physical record keeping was more their function than it was mine at that point. I didn't concern myself in it as fully as I did instructing them legally what they could or could not do in terms of intercepting conversations.

Q If the officers weren't writing down the substance of the calls for their logs as the calls came in, when would they write them down?

A I would imagine that if a call was not pertinent, as soon as that could be ascertained, they would record that in the log. If the call was pertinent, they would put a star or a P and go back and listen to it



rdr25

Fishman-cross

1  
2 or make a copy and listen to the copy so they could  
3 begin to roughly transcribe it. The eventually typed  
4 transcripts would be used in any future affidavit we  
5 would want to submit.

6 Q Where would they make these copies? Would  
7 they have two recorders at the plants?

8 A I don't know exactly how they made the copies.

9 Q Well, did you ever ask the officers how they  
10 were making these copies of the tapes?

11 A I know that they were issued new reels of  
12 blank tape by the investigators of our office. These  
13 were used to record conversations off the telephone. They  
14 also made copies of the conversations used from  
15 transcribing so they would not be transcribing when the  
16 phone activated the machine again. Specifically how  
17 or where they made duplicates I don't know if I was aware  
18 of at that time.

19 Q Did you ever give any of these officers per-  
20 mission to take those tapes out of the plant and make  
21 copies somewhere else?

22 A I don't recall that the subject was discussed  
23 frankly.

24 Q Well, then, you don't know whether or not the  
25 officers actually did that, do you?

1                   A       Well, I know that at one point, or I'm pretty  
2  
3       sure at one point copies were made in the district  
4       attorney's office squad, copies were made of the tapes.  
5       But I think that that was later on.     So I honestly  
6       couldn't say I know exactly where they went and what they  
7       did in making copies of the transcripts.

8                   Q       And you don't know whether or not there were  
9       more than one tape recorder at the plants?

10                  A       I was not at the plant.     I don't think I  
11       was specifically told we have two, three or a dozen.     I  
12       know at one point I got a call from Sgt. MacDonald to the  
13       effect that the tape recorder that they had been issued  
14       by the police department to make these recordings had  
15       broken down and would it be all right for one of the men of  
16       the team to use his tape recorder on the machine  
17       until they could get the police department tape recorder  
18       fixed.     I said that would be okay.     This was  
19       December 24, I think.     But as to whether or not it was  
20       general practice to have more than one recorder at the plant  
21       I don't know.     It very well could have been.

22                  Q       I don't know whether you know now, but at the  
23       time this investigation was going on, more particularly in  
24       the month of December of 1971, you had actual or you  
25       had knowledge of which officers were at the Bronx plant

rdr27

Fishman-cross

and which officers were at the Manhattan plant each day, did you not?

A No.

Q Well, in other words, you didn't know which officers were at which plant?

A Correct.

MR. FEEFFER: Objection, your Honor. Asked and answered.

THE COURT: Whenever you have to start the question with "in other words," think whether you need it.

Q Were you ever told by Detective Eaton that he had spent time at the Della Valle home plant and also at the Diane's Bar plant?

A I don't recall whether he told me that or not. I don't know whether he did or not.

Q Well, you were furnished with logs on the 20th, you told me.

A I was furnished with transcripts on the 20th and I think also logs on the 20th.

A Did your transcripts reflect which officers were at which plant on a daily basis?

A I don't recall now whether the transcripts indicated who monitored or who intercepted a conversation,

1 rdr28

Fishman-cross

2 no, I don't recall.

3 Q I didn't ask you who monitored, I just asked  
4 you which officers were at the particular plant.

5 A I don't recall. If you have a copy of the  
6 transcripts I could look at them and tell you.

7 Q What about the logs, did the logs reflect that?

8 A I believe the logs reflect who was at the  
9 plant at all given times. But as I say, I do not recall  
10 whether I got logs on the 20th.

11 Q At any time between December 10 and December 20  
12 when you had conversations with Detective Eaton on your  
13 phone, did he discuss any difficulty with respect to  
14 hearing Joseph Della Valle's voice?

15 A Difficulty hearing his voice?

16 Q Difficulty -- let me put it this way:  
17 Did Detective Eaton tell you directly between the 10th and  
18 the 20th that he wasn't sure whether or not he was  
19 listening to Della Vallue's voice?

20 A Perhaps I can answer you this way, sir: I  
21 was aware during that intervening period that the officers  
22 monitoring the wiretap were having difficulty discerning  
23 who they were listening to.

24 Q Well, do you know if anyone of those officers  
25 had ever heard Della Valle's voice prior to December 10?

rdr29

Fishman-cross

1  
2 A As far as I know, exclusive of Detective  
3 Eaton, none of them had.

4 Q You do know, though, that certain of those offi-  
5 certs in their course of surveilling Mr. Della Valle  
6 passed within a couple of feet of him prior to December 8,  
7 did you not, sir?

8 A I don't know if a couple of feet is an accurate  
9 way of putting it. I don't think they were in sight of  
10 him. They were close enough to see some of his movements.  
11 How close they were, the exact distance, I don't know.

12 Q For example, walking into the same restaurant  
13 or eating establishment where Mr. Della Valle was,  
14 certainly you knew that two of your detectives did that on  
15 one occasion, right?

16 A Yes.

17 Q Did they ever tell you whether they heard  
18 Mr. Della Valle speak at that time?

19 A I don't recall them telling me that they  
20 heard him speak, no.

21 Q So you don't know whether they did or didn't.  
22 Isn't that a fact?

23 A I believe there is some reference. I don't  
24 know if it's to Della Valle or to other individuals who  
25 were seen conversing with one another and stopped talking

1  
2 apparently when they saw the officers. I don't think  
3 any of them said they overheard him but I could be  
4 wrong.

5 Q So the only one you could actually be sure  
6 about would be detective Eaton with the two phone conver-  
7 sations from Lexington Avenue?

8 A That's the only officer I can recall telling  
9 me, "I heard his voice."

10 Q Would you tell me, did Eaton describe how  
11 that phone call was made to you?

12 A Well, he told me that he was in the phone  
13 booth. He told me that he watched the informant -- you  
14 are talking about the two telephone calls related in the  
15 affidavit?

16 Q Yes.

17 A That a phone booth was used, that the informant  
18 that dialed the number and Eaton watched. The informant  
19 held the phone and Eaton put his ear as close to the  
20 receiver end as he could so he could overhear the conver-  
21 sation. I believe that is the way he told me that the  
22 conversations had occurred.

23 Q In other words, Eaton had the phone pressed  
24 to his ear listening to Mr. Della Valle's voice?

25 A I don't think he said that, no. I want to be

rdr31

Fishman-cross

careful here on reconstructing what he told me and what I imagine happened.

Q Please, I don't want what you imagined, just what he told you.

A All I can specifically remember him telling me was that he was at the phone booth and I think he said, but I'm not positive, but he said in the phone booth with the informant and he was able to hear what the informant was saying and what was said to the informant. Where his ear was I don't think I asked.

Q Well, certainly Detective Eaton didn't tell you that the person he heard on November 2 was a different person than the one he heard on October 29, did he?

MR. FEFFER: Objection, your Honor.

THE COURT: Are you asking now what the detective told Mr. Fishman or what the affidavit said?

MR. MC ALEVY: What the detective told him, sir.

THE COURT: Do you remember anything other than what you put in that affidavit?

THE WITNESS: I can't really distinguish the two, your Honor.

THE COURT: I'm trying to help you to be useful to me as well as to your client. If he remembers

rdr32

Fishman-cross

1  
2 that Detective Eaton told him something that deviates from  
3 the affidavit, unless you make a splashing demonstration  
4 that I should do otherwise, I'm going to assume the  
5 affidavit is nearer to the mark than what he now remembers  
6 unless, and let's be entirely candid, you persuade me that  
7 he was shading the truth then and is more accurately re-  
8 calling it now, which is a somewhat unlikely situation.

9 MR. MC ALEVY: The only thing that it brought  
10 to mind was that this morning out of the blue, for the first  
11 time, I was made aware of the fact that there was some  
12 difficulty on the part of the government in understanding  
13 the voice of Joseph Della Valle. There is not --

14 THE COURT: This came to you out of the blue  
15 this morning?

16 MR. MC ALEVY: Yes, sir.

17 THE COURT: I had heard something about it  
18 yesterday, quite a bit actually. But passing that, I'm  
19 just trying to help you, one, to see that we don't work  
20 every Sunday; and two, to stick to what appears to me to  
21 be in the area of our concerns here. I wouldn't press  
22 you too far. I'm going to interrupt you because I see  
23 somebody who has a piece of paper for me to sign.

24 (Discussion off the record)

25 THE COURT: Gentlemen, let's take about a



1 rdr33

Fishman-cross

2 five-minute recess.

3 (Recess)

4 MR. MC ALEVY: May I continue, sir?

5 THE COURT: Yes.

6 Q Mr. Fishman, going back to the tapes and the  
7 removal of the tapes by an officer to retape certain con-  
8 versations are you telling this court that you permitted that  
9 type of behavior?

10 A Yes, definitely.

11 Q Do you know whether or not any of those tapes  
12 were removed from the plants to be retaped?

13 A I don't know whether the retaping was done  
14 at the plant or at my office or at a police department  
15 facility. I don't know where it was done.

16 Q You mentioned something about an officer  
17 bringing his own machine in when one of the tape recording  
18 machines was broken. You recall that?

19 A Yes.

20 Q When was that?

21 A I believe it was December 24. I have a  
22 note, "Sgt. MacDonald called Ray: Della Valle tap. PD  
23 machine breaking down. I okay use of a PO's private  
24 machine."

25 Q Do you know what happened to the tapes that

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2 were on the machine that broke down?

3 MR. FEFFER: Objection, your Honor.

4 It now seems that that tape refers to the Della Valle  
5 house tap and not Diane's Bar.

6 MR. MC ALEVY: I'm just going to the  
7 question, your Honor, of overall supervision of these  
8 tapes.

9 THE COURT: Okay, I'll allow it.

10 Do you have the question?

11 THE WITNESS: Do I know what happened to the  
12 tape that was on the machine when the machine broke down?  
13 I know that all of the tapes that were used to record  
14 conversations were issued by my office. They were  
15 numbered before the officers got them. They were  
16 returned back into my office after they were recorded.  
17 So that's what happened to that. It was turned back to  
18 the New York County DA's office investigation bureau.

19 Q These other tapes that conversations were  
20 recorded from, what happened to these tapes?

21 A I couldn't tell you.

22 MR. MC ALEVY: Thank you, Mr. Fishman.  
23 I have no further questions.

24

25

## CROSS EXAMINATION

BY MR. FEITELL:

Q Now, these transcripts that you got on or about the 20th of December, Mr. Fishman, 1971, what did they look like?

A They were on 8 by 14 white pieces of paper. They were typed. There might be one, two, or three conversations typed on a page, depending upon the length of the conversations. I believe they had, to the extent possible, the identities of the participants of the conversation. I think they also had the days and times of the conversations typed on them.

Q Okay. Take a look at 1A for identification and tell us whether that looks like what you looked at.

(handing to witness)

Q May I have that back for a moment, please?

A Surely (handing).

Q I hand you back 1A.

A The typed material and some of the handwritten material is what I got. Some of the handwritten material I added later.

Q You are referring to certain handwritten material?

A Yes.

Q You had a page open.

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1  
2 A I think some of that, if these were made  
3 from the copies that I have in my office, they may or may  
4 not have been. I think -- I'm talking about the hand-  
5 written material Xeroxed, not the fresh in stuff.

6 Some of these red ink marks and blue ink  
7 marks, I'm not referring to that.

8 Q That's mine.

9 A For example, on page 3 the second phone call  
10 where it says "In Beansy, out Nigro," the words "Vino  
11 Green" are written in. It's hard to read that but  
12 that's sort of thing I know I added from time to time to  
13 my copies of the transcripts. Whether these Xeroxes  
14 were made from my copies or from the police department  
15 plant or what, I don't know.

16 Q Getting back to Vino Green, now Vino Green  
17 was a person known to you, right?

18 A He's known to me now.

19 Q Very briefly, he is known to you, right?

20 A He was a defendant at one point in time in a  
21 number of narcotics indictments in the New York County  
22 DA's office.

23 MR. FEITELL: Do we have the original trans-  
24 cripts from which these Xeroxes were made that you turn  
25 over to us?

MR. FEFFER: No.

A I believe I have the originals.

Q You have the originals?

A The original typed copies, I'm not sure.

Q You didn't type those up, did you?

A No, I got them from the office.

Q When you saw material of importance to you you would scratch in information that you deem even more pertinent, such as Vino Green's name?

A Yes.

Q And you did it in connection with Vino Green here, right?

A Assuming that's my handwriting. As I said, the handwriting is hard to figure out on the Xerox.

Q Is there anything on these transcripts that indicates to you that indicates what you are looking at is in what you examined in its original form on or about December 20, 1971?

A As I said, aside from one or two handwritten changes which might or might not have been on the transcripts, this is what I got, with that one possible exception.

Q So the papers which you had read, these are the copies you are handling now, these are Xerox copies

basically of the material that you were examining and amending as you went along while you were reading it, either then or recurrently, right?

A Well, again, on December 20 I got the transcripts from the beginning to December 15. From time to time I would go over them as well as additional material I got so I might write something on a December 12 conversation that I learned in January, if that answers your question.

Q The transcripts that you got, that you examined way back then, these appear to be Xeroxes of, right?

A Yes.

Q And you got the transcripts through the 15th, right, on or about the 20th, right?

A Correct.

Q Now, sometime around the 19th or 20th you got the logs, too, right?

A I think so, but I'm not positive.

Q Well, as a matter of fact, you were interested in the content of the tapes and not in the line by line description of nondescript calls. Isn't that so?

A I was interested in everything that was going on.

Q But you didn't listen to any of the tapes

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themselves until about February or the end of January, right?

A That's correct.

Q Of '72, right?

A I did not listen to any tapes, as far as I can recall, during the life of the first Diane's Bar wiretap.

Q Comes December 19 or 20 you had a telephone call from Mr. Eaton regarding a conversation that he had heard?

A The 19th was a Sunday and I believe I was in the United States Army doing reserve duty. The 20th was a Monday, I was in my office, Eaton was in my office according to the diary entry for 45 minutes. We went over the transcripts.

Q Is that the time he told you that he now has a reason to believe that Steve and Beansy are two different people?

MR. FEFFER: Objection. Asked and answered three times.

MR. FEITELL: This relates to my client, Judge.

THE COURT: I can't have the three of you going over the same ground. You have to listen when other

questions are asked. Next question.

Q Did you make a notation of that in your notes?

A All I have in my notes for the 20th is, "Eaton in, 2:45-3:30 with transcripts to 12/15." That's it for the 20th.

Q Before that day, before the 20th and between the 8th and 20th, how many other notations do you have that Eaton was in to see you?

A None.

Q It's a blank right through, right, as to Eaton? The first time he comes in is the 20th and the all important thing that he is telling you is that they have now established the difference between Della Valle -- that Steve and Beansy are the same person -- withdrawn. That Della Valle is a different person from Beans, right?

A That was one of many important things that we discussed.

Q Did you write any of those important things down?

A No.

Q Can you tell us one other important thing that he told you with respect to the overheards which were going to form the predicate for the next order?



1  
2 A I can remember a number of things that we  
3 discussed. Would you like me to elaborate?

4 Q I'm not asking you that. Another important  
5 thing in terms of the predicate that was going to be  
6 established for Judge Birns when you got around to getting  
7 in front of him again?

8 A Well, we went over the conversations, we dis-  
9 cussed what they meant. We discussed the fact that every-  
10 body was sick very likely meant that narcotics were not  
11 available. We discussed the fact that there were a  
12 number, maybe dozens, I don't know if that word was used,  
13 of people and that they all seemed to have one or more  
14 nicknames. We discussed that a lot of the conversations  
15 were very short. We discussed that people were extremely  
16 unwilling to identify themselves on the telephone by more  
17 than a nickname.

18 Q What do you mean by unwilling to identify  
19 themselves on the telephone?

20 A That you would get conversations such as --  
21 the phone would be picked up, hello, how are you, pretty  
22 good, I'm feeling sick, gee, that's too bad, I'm feeling  
23 sick, too. Take care, goodbye.

24 Q In your experience as an assistant district  
25 attorney did you ever listen to telephone calls where

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people who know each other don't say hello, this is  
so and so?

A In my experience as a human being I know that  
such things occasionally occur.

Q When you call your wife do you say hello, this  
is Clifford?

A There are times when I have, yes, but it's--  
I'd say hi, honey, or whatever.

THE COURT: You said a lot of the conver-  
sations were said to be very short. Did you discuss the  
length of them really or what does very short mean?

THE WITNESS: I'm talking in particular --

THE COURT: I'm just asking you. Did you  
discuss the length of them?

THE WITNESS: In terms of the specific  
conversations I saw transcripts of, yes. A transcript  
that might have been 10 or 12 or 15 typed lines in which  
neither participant named himself or the other, in which  
they appeared to be talking around something without naming  
that something. I think it was also mentioned that a lot  
of conversations seemed to be fairly short in length but  
I didn't ask him for a breakdown in terms of seconds or  
minutes.

2 Q Take a look at 1B and tell me whether you ever  
3 saw this (handing).

4 A I'm not positive whether I had this or a carbon  
5 copy of this.

6 Q Do you know what it is?

7 A Yes. This appears to be -- this is the log  
8 of the plant for the wire tap at the bar. The plant they  
9 used I believe was a school.

10 Q So you know it is the logs in connection with  
11 the Diane's Bar first order, right?

12 A Yes, sir.

13 Q And do you notice as you read these various  
14 first names, such as Jimmy, Sam, Mr. Murray, Sam, Murray,  
15 et cetera, Sam, Frenchy, Sam, Danny?

16 A Yes.

17 Q And the officers were telling you that on all  
18 of the logs there were a lot of people talking to each  
19 other and there were no names, right?

20 A In a number of conversations that had occurred,  
21 yes.

22 Q Did he tell you what percentage of the conver-  
23 sations the people spoke to each other and didn't address  
24 each other by name?

25 A I didn't ask for a statistical breakdown, no,

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sir.

Q Did you ask him for a rough estimate?

A No.

Q Did you ask him whether these people who were talking to each other appear to know each other from beforehand, that is, persons who weren't using their names?

A I don't think I asked him that question. I may have.

Q Did you ask him whether it appeared in listening that they had conversed with each other before and had quite apparently knew one another?

A I think from the transcripts that it is fairly apparent. And it was the transcripts that I devoted most of my attention to.

Q So December 20th you were in your office and then for the first time you learned that Della Valle was not Beans or Beansie, right?

A Correct.

Q And the transcripts in front of you at that time?

A Transcripts up to the 15th, yes.

Q When did the transcripts up to the 15th come in?

A On December 20th Detective Eaton brought me

1 the transcripts of conversations intercepted, recorded  
2 and transcribed and typed from the first day the plant  
3 was open until the 15th.  
4

5 Q How often were the transcripts typed, to your  
6 knowledge?

7 A Well, it was the practice of the team to  
8 transcribe -- withdrawn.

9 It was the practice of the team to type the  
10 transcript of any conversation that was transcribed. As  
11 far as I know, anything that was transcribed was sub-  
12 sequently typed.

13 Q What I am saying is when is subsequently?  
14 When would they type up the transcript after they heard  
15 the call and deemed it significant?

16 A As soon as they had the manpower to transcribe  
17 it and type it.

18 Q Would that be in the ordinary course of events?

19 A Given the fact that they were apparently --  
20 they were understaffed, it would sometimes take a day or  
21 more to get a transcript typed up, or it could be two  
22 or three days.

23 Q And would the maximum be about three days?

24 A I really couldn't say. I did not ask him  
25 to give me a minute-by-minute rundown of everything they

MR. FEITELL: Do you have a clean copy,

counsel?

MR. FEFFER: Clean copy of the logs?

MR. FEITTEL: Of the logs.

MR. FEFFER: The yellow sheets.

MR. FEITELL: The yellow sheet doesn't bear the indication S. Dellacava. How come my copy has it on here.

MR. FEFFER: Your copy was Xeroxed from copies we had in our office.

MR. FEITELL: That's why I am asking for a clean copy of the Xerox that you gave me.

MR. FEFFER: You have a copy in your hand of what we gave you. That's exactly what I have.

MR. FEITELL: You have one just like I have without my markings on it?

MR. FEFFER: No, because they contain my markings.

MR. FEITELL: So you don't have one that's clean.

Q Take a look at this, which is my copy, and would you mind if I obscure the balance of the writings on it, and I point to this 1916. Do you see that "S. Dellacava"? Is that your handwriting?

A Well, I'll tell you, Mr. Feitell, it's hard

1           to tell.     It could be but I really couldn't say yes  
2  
3           or no.

4           Q     Take a look at the other name written over the  
5           second male, "Carmine."     Is that your handwriting?

6           A     Is that Carmine or Carmen?

7           Q     Either way.

8           A     I couldn't say for sure.     I don't know.

9           Q     You don't recognize that as your handwriting?

10          A     I don't recognize it as mine or not mine.

11          What can I tell you?

12               MR. FEITELL:     What Mr. Feffer has just  
13           shown me is a carbon copy of 1B, which is also on yellow  
14           cap.     It does bear the inserted words that we are talking  
15           about here now.

16          Q     Would you be kind enough to look at the  
17           writing "S. Dellacava" written in red ink, is that your  
18           writing?

19          A     The words "S. Dellacava" looks like they could  
20           be in my writing, the word "Carmine" looks like it is  
21           less likely to be.

22               MR. FEFFER:     All of the additions in the red  
23           ink were made pursuant to my directions some time during  
24           the course of this past winter by another officer.     Any  
25           time you see a red ink addition, they were made after the



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2 tapes were listened to for a second time by the officer  
3 listening to those tapes last winter.

4 MR. FEITELL: Who did that?

5 MR. FEFFER: I think it would be Gus Gastitus  
6 or Michael Giovanello, who is sitting right here.

7 MR. FEITELL: That ends that.

8 BY MR. FEITELL:

9 Q Now, in connection with the logs, did you  
10 ever have occasion to have any discussion with Mr. Eaton  
11 when he was in your office on the 20th regarding that part  
12 of the logs which deals with a conversation that took place  
13 on the 10th of December at 1535 hours, if I'm not mistaken?

14 A If I had the log and the transcript of  
15 that conversation, if there is one, I might be able to  
16 tell you. I don't recall that type -- I don't recall  
17 in that detail without the written material in front of  
18 me to recognize it.

19 Q Page 6 of the log.

20 A I don't have the log, Mr. Feitell.

21 Q I'm trying to locate these things and it is  
22 simply impossible.

23 MR. FEFFER: Whattime was that call?

24 MR. FEITELL: 1535 on the 11th.

25 MR. FEFFER: Page 6.

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MR. FEITELL: I can read from the original but not on the copy you gave me.

Q Take a look at the call at 1535. Do you recall ever having heard that call?

A Having listened to it?

Q Yes.

A No.

Q Did anybody ever tell you that was a call that Stephen Dellacava picked up the phone and told the party at the other end that he was tending bar at Diane's?

MR. PEPPER: Relate to me where you are on the logs.

MR. FEITELL: The last line.

THE WITNESS: This would be page 7, Mr. Feitell.

If that call was transcribed -- you are talking about the last line on page 7?

Q Yes.

A If the call was transcribed we may have discussed what the conversation was. I don't recall from that one line on the log that we discussed it.

Q Well, with respect to the various Steve and Beans calls that your officers had been overhearing, did you ever find out that any of the officers ever went into the bar, Diane's Bar, to check to see what the physical

appearance of Steve or Beans was?

A I'm reasonably sure we discussed the inadvisability of doing that.

Q But you are not entirely sure, right?

A A hundred per cent entirely, no. Again I am reconstructing and I want to be fair to you, Mr. Feitell, not to reconstruct into my memory conclusions I might have arrived at subsequent to the events in question.

Q This gentleman, Mr. Kaufman, you went to talk to, was he somebody you regularly went to to take consultation regarding law points in the Appeals Bureau?

A He's one of the brightest legal minds I have ever had the pleasure to talk to.

MR. FEITELL: Judge --

A I apologize.

I frequently went to him.

Q He wasn't the chief, was he?

A No.

Q He wasn't the deputy chief, Mr. Louis Friedman, was he?

A I don't think there had been any distinction between Lou Friedman and Herman Kaufman at that point. They were the two senior men in the bureau. I'm pretty sure.

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Q Did you tell him to help you draft the order?

A Did I tell him to help me?

Q Yes.

MR. FEFFER: Objection, your Honor. Totally irrelevant.

THE COURT: I will allow it.

Did you ask him?

THE WITNESS: I went to him on the 23rd and asked him, "Do we have enough?" He said, "Yes."

Then before I went with the final typed copy of the order to Mr. Hogan, Mr. Kaufman -- again I am not 90 per cent sure -- approved it. I know I retyped parts of the affidavits many number of times before it was approved.

Q So he looked it over before you submitted it?

A Yes.

Q And you were depending --

MR. FEITELL: Withdrawn.

Q When you discussed with your officers before they implemented the tap what the instructions were as to its operation, did you have any discussion with them as to how to deal with the situation when they weren't sure of the identity of the voices they were listening to?

MR. PEPPER: Objection, your Honor. This has been asked and answered again on two different occasions as to the instructions that this individual gave.

THE COURT: I will allow it.

A Mr. Feitell, I reviewed with him as I already testified, gave him the instructions that I told you about. We all knew there would be times when conversations would be intercepted and we didn't know whose conversations they were. An effort was to be made, first, to monitor the wire tap in accordance with the court order; second, to find out who was talking; third, to find out what they were talking about. More or less in that order of priorities.

Q Who was there when you gave these instructions?

A Lieutenant Hill, Detective Eaton, and I believe Detective McCrory was there also, although I think he had or was in the process of being transferred.

Q Well, did any of these officers, particularly Mr. Hill, ever say to you: What do we do in a situation when we don't know the identity of the voice? How long can we listen until we pick up the identity?"

A Again, I'm trying to distinguish between instructions I might have given then and --

1  
2 THE COURT: Repeat the question.

3 MR. FEITELL: Read it back.

4 (Question read.)

5 A I don't recall him specifically being asked  
6 that question. There was discussion on that sort of  
7 area.

8 Q Did you ever tell them, in words or substance,  
9 "Look, if you don't know who is on that phone, after a  
10 reasonable period of time you should get off"? Or  
11 did you say to them, "Stay on until you find out who it  
12 is if you are in doubt, no matter how long you have to  
13 stay on"?

14 A I don't think I gave them either of those instruc-  
15 tions. "If you don't know who is on the phone, try  
16 to find out. See if one or more parties will identify  
17 the participants to the conversation. If after a  
18 reasonable period" -- I really don't know what specifically  
19 I told them in that context.

20 Q Well, did you ever tell Mr. Hill that he could  
21 stay on ad infinitum in connection with a call where  
22 he didn't know the identity of the parties in order to  
23 determine the identity of the parties?

24 A I don't think I said that specifically either,  
25 no.

1                   Q       Or anything close to it?

2                   A       I told him and I told Eaton they should exercise  
3 common sense, their intelligence, good faith, and if they  
4 had any problems they should call me.

5                   Q       Now, after some months had gone by and you  
6 had an opportunity to see how much common sense had been  
7 applied, you found it necessary to draft a letter to the  
8 officers, right, embracing instructions, is that cor-  
9 rect?

10                  A       The factual part of your question is correct.  
11 The conjectural part is not, Mr. Fiteitell.     Can I elabor-  
12 ate?

13                  Q       Let's take it question by question.

14                  A       Okay.

15                  Q       So that you drafted a letter instruction or  
16 a memo instruction to all police officers assigned to the  
17 New York County DA's office regarding wire tapping?

18                  A       Wire tap 71 and 72.

19                  Q       When did you promulgate that?

20                  A       I think that it was around June of '72.  
21 I know it was 1972, late spring, early summer.

22                  Q       While you are checking, was Mr. Kaufman still  
23 around?

24                  A       Yes, he was.     I conferred with him in prepar-  
25

ing that.

Would you like me to try and pinpoint the date?

Q Very much.

(Pause.)

THE COURT: Is this important enough for us to be waiting this long?

MR. FEITELL: Now that I see how long it takes, you are quite right, your Honor.

Q Since you haven't found it, let's proceed.

You haven't found it, have you?

THE COURT: Ask another question.

Q By the time you drafted this you had had an opportunity to listen to more of the tapes, hadn't you?

THE COURT: Mr. Fishman, answer the question.

A I'm thinking. Obviously I had an opportunity. I never sat down to listen to all of the tapes. So how many additional tapes I listened to I couldn't tell.

Q Did you ever listen to any tapes between Stephen Dellacava and a woman named Jean?

A I believe I heard conversations between Mr. Dellacava and Jean, yes.

Q Did you ever discuss those conversations with the officers?



A Yes.

MR. FEPPER: Objection. Are we talking until the time of this memorandum in the summer of 1972?

THE COURT: What time are you asking?

MR. FEITELL: Take it up until the memorandum.

THE COURT: What is the relevance of that?

MR. FEITELL: At the side bar, Judge?

THE COURT: No. Tell me what the relevance is.

MR. FEITELL: I very much dislike doing so but if your Honor is going to force me to do it, I will do it. I want to find out from the witness whether or not, in talking to the officers and in listening to the tapes, he found out that the hilarious feature -- one of the hilarious features of this case, which your Honor will know about, are these endless conversations between Stephen Dellacava and a woman named Jean. And whether they became a topic of amusement and whether the officers had become so much involved with the conversational byplay of an amorous nature between these two people, that Mr. Fishman had to draft into his memorandum written instructions, guarded though they are, alerting these people to stop that.

THE COURT: Well, ask him about that.

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MR. FEITELL: I hope he didn't understand.

I hope he wasn't listening.

THE COURT: Wait just a second. I hope he is like you, an officer of the court who I can presume will be truthful sitting here in the federal courthouse. I would extend the same presumption to you as a witness, Mr. Feitell.

Now, why you suspect so strongly that he wouldn't follow what we presume all of you follow, I don't know. Ask him your question. He is under oath.

BY MR. FEITELL:

Q Did you have any discussion with the officers prior to drafting this memo, at any time prior to drafting this memo, concerning their listening in to these conversations between Steve and Jean?

A Yes.

Q What did you say to them?

A Can I also answer what they told me, because I asked them questions and they gave me answers about it.

Q Tell us when for the first time, too.

A I don't recall whether conversations between Mr. Dellacava and Jean were discussed during the Diane's Bar tap. I know in my subsequent eavesdropping warrant

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Fishman-cross

it was discussed. Conversations between those two individuals --

THE COURT: Wait a moment. I don't want to hear about that. That's why it is relevant to know when you are talking about.

We are talking about the two Diane Bar orders and eavesdroppings that took place under them. That's what you are talking about, isn't it, Mr. Feitell?

MR. FEITELL: Yes. And also whether any of his comments or remarks to the officers on this subject were based upon his knowledge, direct or indirect, of the contents of the conversations regarding Steve and Jean on the first and second Diane's Bar taps. Whether he heard about it in May is unimportant.

THE COURT: Right. I think we are agreed on that.

A I can't pin down specifically when we first discussed them. I know there was discussion of them. I have been involved in aspects of this investigation for so long I can't tell you honestly whether I first heard something in December, January or March. I can't say specifically that I did or did not talk about those conversations in December or January or March or May. That's the best I can do.

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If you want me to answer the question with that understanding --

THE COURT: I think so. I take it you are telling me that part of what I am going to privileged to listen to is going to be long conversations of this kind. Is that what you are saying?

MR. FEITELL: Yes, Judge. Every one of them, if we can.

THE COURT: Well, you can spare me some of them.

In any event, now you may answer.

A Fairly early in the investigation -- and let me preface that by saying the investigation went 18 months or more -- but fairly early in the investigation I was told by Detective Eaton that Mr. Dellacava had from time to time made a number of phone calls to a lady named Jean in New Jersey and that many of the conversations were of a personal nature. And in the middle of these conversations Mr. Dellacava and Jean might discuss, "What are you doing today? Who are you meeting today? Have you gotten the money today?"

There were conversations when Dellacava would say, "You know you shouldn't say that over the phone."

Now, specifically when these conversations

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1 occurred or when my conversations with the officers took  
2 place I couldn't pinpoint them. We were aware of the  
3 fact of a man talking to a young lady who might be  
4 considered his girlfriend. They were sometimes talking  
5 about very personal things, and yet in the middle of  
6 these personal discussions there had been a discussion of  
7 what Dellacava's plans were.  
8

9 In the context of other conversations, knowing  
10 what his plans were could be extremely important on how  
11 to anticipate following him, how to anticipate who  
12 he might be meeting, what that meeting might be about.  
13 "Can we continue to listen to these?"

14 I looked at some of the transcripts. I asked  
15 him what the conversations involved, both on the personal  
16 and nonpersonal nature, and I said, "Yes."

17 Then when I wrote up this memorandum, since --  
18 I know of no legal privilege really between a boyfriend  
19 and girlfriend, which is how I characterized these conver-  
20 sations, but I felt the area was delicate enough and  
21 was a touchy enough subject that I should include that  
22 in the memorandum.

23 I wrote the memorandum for two reasons. If you  
24 want me to go into that, I will do that also. That's  
25 the best answer I can give to the question about Mr.

Dellacava and Jean.

Q Is there anything you would like to add to it?

A Not to your specific question, no, sir.

Q With respect to your comment that you understood that on at least one tap she said to him, "Where is the money," is that what you are saying?

A Well, will you be getting the money today or will you be getting the package today? I don't have the transcripts in front of me.

Q Could you tell us where we could find that since it was pointed out to you?

A I don't recall if it was the Diane's Bar wire tap or a subsequent one.

Q Can I ask you over the weekend to look through your notes and the materials that you have in this case -- incidentally, you are still working in narcotics, aren't you?

A Yes, sir, I am.

Q You have all of these logs and transcripts back at your office or available to you?

MR. FEFFER: The government can save Mr. Feitell some trouble in that regard. We will be glad to produce conversations between Dellacava and Jean on the

rda21

Fishman-cross

Diane's Bar wire tap in which one can construe things like meetings, the possibility of money passing.

MR. FEITELL: I would like to know, since we have that offer, where she said bring the money.

MR. PEPPER: I didn't say that.

MR. FEITELL: That's what I am asking him about and you are offering something else.

A Mr. Feitell, again, I know I was shown transcripts of and discussed with the officers conversations between Mr. Dellacava and the young lady -- I assume she is a young lady; I have never seen her -- in which both personal matters and matters --

Q I've got that. I understand that.

A I don't know.

Q You can't tell me about any conversation where she said, "Bring the money," or words to that effect, can you?

A A discussion of money, yes. I know there were such conversations.

Q In relation to drugs?

A In the opinion of the officers doing the monitoring and my own opinion, probably.

Q You listened to it yourself?

A I don't know specifically if I listened to those

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Fishman-cross

1           A       I don't know if I coined it but I used it in  
2  
3 the memo, yes, sir.

4           Q       You used that in connection with your para-  
5 graph 7 of your suggested procedures dealing with  
6 conversations in which no named subject is participating,  
7 right?

8           A       I don't know the paragraph number, but, yes,  
9 I did discuss it in that context.

10          Q       As to those you told the officers to engage  
11 in spot listening, right?

12          A       Yes.

13          MR. FEFFER:   Objection, your Honor.

14          THE COURT:   What is the objection?

15          MR. FEFFER:   Your Honor, we are talking  
16 about a subject that was raised for the first time in  
17 the memorandum written in the summer of 1972.   I believe  
18 Mr. Fishman indicated he did not give spot monitoring in-  
19 structions on December 19th.

20          MR. FEITELL:   I will object to that, your  
21 Honor.

22          MR. FEFFER:   He testified he did not.

23          THE COURT:   Well, whatever he has testified  
24 to, that is not a ground for an objection to a question  
25 on cross examination.   He is allowed to explore that and

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Fishman-cross

testify to it. The objection is overruled.

Q You didn't give any instructions respecting spot monitoring at the very beginning, did you?

A I don't believe so.

Q You hadn't even heard of it at that time, had you?

A I don't know if I heard of it.

Q Did Mr. Kaufman tell you about spot monitoring, the expert?

A I don't recall.

Q He didn't know about that either, right?

A I can't testify as to what he did or did not know.

THE COURT: Is Mr. Kaufman a named defendant here?

Q You went back and spoke to Mr. Kaufman later on before you drafted this, right?

A Mr. Kaufman. I think I spoke to a number of other assistants in the office.

THE COURT: Look, if he said yes before, why do you ask him again. If that's the answer you like --

MR. FEITELL: I'm going to the next question.

THE COURT: Go to the next question. It is 4:20 and we want to get Mr. Fishman home so he doesn't

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have to come back Sunday.

BY MR. FEITELL:

Q You never suggested to the officers that with respect to these boyfriend-girlfriend conversations a possible procedure would be to duck in and out of the conversations instead of consuming them by their entirety?

A I told them to do what is written in the memorandum instructing them what to do.

Q You think it is reasonable based upon your experience as a law enforcement officer to listen in on a boyfriend-girlfriend conversation in its aspects which, for long periods of time, have absolutely nothing to do with narcotics without ducking in and out of the conversation, at the very least?

A May I answer the question?

Q Go ahead.

THE COURT: You may try, but I don't know how it is going to help me, Mr. Feitell. If you have reason to believe in one fleeting instant you are going to get something useful, I can't myself understand how you know whether to duck in and out.

But go ahead, answer it.

THE WITNESS: Thank you, your honor.

Q When the male individual is, in your opinion --

1 in my opinion, one of the major narcotics distributors  
2 in the City of New York and the State of New York,  
3 when a detective or a team of detectives have investigated  
4 him extensively for a number of months, when you know  
5 from this investigation that his moves are extremely devious,  
6 that his language is extremely hard to decipher --  
7

8 MR. FEITELL: I object. This is a speech  
9 and it is based on the totality of his information. If  
10 he is going to answer the question, he should limit it  
11 to the conversations in which Jean and Steve were talking  
12 in the first few days when none of this knowledge was  
13 known to him.

14 THE COURT: Overruled.

15 A When you know further that he talks, has talked  
16 in the past, albeit in the same guarded, coded terms  
17 he's talked about narcotics to everybody else over the  
18 phone, when you know he has discussed his movements,  
19 his plans for the day, his anxieties or anticipations, and  
20 from other conversations you know what those anxieties or  
21 anticipations are, and when he is sometimes willing to  
22 tell Jean on the phone when he expects to meet somebody  
23 where he expects to be at a particular time, and you  
24 further know that that information might make the differ-  
25 ence between making a seizure or gathering additional

valuable information, yes, they should listen, record, do their best to find out what his plans are, where he plans to go, who he plans to meet, whether he is happy or unhappy about other items of information obtained from surveillance or wire taps.

Q If the officers listened to Steve-and-Jean conversations, let's say, during the first week of the tap when none of this conglomeration of information which you just delivered yourself of was known to you, would you say it would have been proper for the officers exercising good faith to listen to his conversations which related entirely and wholly in those circumstances to conversations of an amorous or personal nature?

A You are talking about the first week of the Diane tap?

Q Yes. First week. Take it a week at a time.

A Depending upon what other conversations of the male we now know apparently as Dellacava had had and what things he might have discussed, whether or not such conversations with Dellacava had been intercepted that were narcotics conversations, yes.

Q When was the first narcotics conversation of Dellacava or Steve or Beansie intercepted?

1           A       I don't have the logs or all the transcripts,  
2  
3       but I know on December 11th, at approximately 7:15 p.m. --  
4       I am looking at the affidavit for renewal -- two days  
5       after the wire tap went into effect you have the first  
6       of the so-called six conversations.

7           Q       The first time -- you didn't even know about  
8       that conversation, right?

9           A       I learned specifically about what -- I got the  
10       transcripts on December 20th.

11          Q       You are telling me now that if you knew about  
12       it then and you heard a man say on the telephone that he  
13       was sick, that that would indicate narcotics to you,  
14       right?

15          A       I'm telling you that what is in Exhibit 2 --

16          Q       You brought it up.     You told me there was a  
17       conversation about a man saying something to the effect  
18       he was sick on the 11th.

19          A       In the context of the conversations that  
20       were intercepted, those sick conversations have a much  
21       greater impact to me than the bare words indicate,  
22       yes, and did then.

23          Q       You knew about the conversation concerning sick  
24       on the 11th, that would stand out in your mind as a  
25       narcotics-related conversation?

1           A       Taken in the context of what was happening at  
2  
3 the plant, yes.

4           Q       Tell me what was the context operating at the  
5 plant and put that conversation against the context that  
6 was operating with respect to Stephen Dellacava, Beans or  
7 Steve on the 11th.

8           A       The conversations were intercepted -- again  
9 I don't have all the transcripts before me -- on the 11th,  
10 on the 12th, 13th.     The specific days I don't know.     1100  
11 They indicated verbally that people were sick, which, in  
12 the opinion of Detective Eaton, the other detectives and  
13 myself, indicated that Dellacava was being asked to  
14 supply narcotics and was unable to do so, was sick, was  
15 unable to come up with the narcotics.

16          Q       And on the occasion of that telephone call  
17 having been made the 11th, assuming your depiction  
18 of it is correct as to its contents, that would have been  
19 your conclusion, too, that this would have been a conver-  
20 sation relating to narcotics, correct?

21          A       I am not sure I understand your question,  
22 Mr. Feltell.

23          Q       Had you been monitoring at that time on Decem-  
24 ber 11th and had heard this conversation, you would  
25 have believed that that conversation regarding being sick

related to narcotics, without anything else before you at that time; is that your testimony?

A No.

Q I am satisfied with the answer. That's as far as I want to pursue it.

Isn't it a fact that it is now abundantly clear to you in retrospect, having gone over all of the tapes and having the benefit of hindsight, that these conversations now appear to be narcotics-related, fairly speaking?

A Maybe I can answer it this way: In December of 1971 I was a complete rookie when it came to wire taps and, really, when it came to narcotics investigations. Detective Eaton, on the other hand, and other members of that squad, that group conducting this investigation, were experienced, knowledgeable men in narcotics and in wire taps. I was perfectly willing, and I felt I could and I still feel I can, to defer to their experience and expertise and knowledge.

Detective Eaton came to me highly recommended by other members of my office, as did other members of the team. I was willing to allow them to interpret some conversations for me because they knew more about these men and about this sort of work than I did.



rda31

Fishman-cross

Q So you had no intensive or specific training with regard to examining into the content of tape conversations and making independent judgments regarding the meaning, covert or otherwise, of what would be on a tape?

A I discussed that aspect of the situation also with other members of the office, the DA's office.

Q You considered yourself, you say, a rookie, right?

A That was the first wire tap I had ever worked on extensively.

Q Inexperienced, right?

THE COURT: You don't have to labor it. He was an inexperienced rookie, a new tyro.

Q You were looking to Eaton to take you through the case, right, to do the right thing, correct?

A Not quite the way you put it, Mr. Feitell.

Q How about Hill, did you look to him for assistance, too?

A I looked --

THE COURT: I heard him say he relied on them for their expertise on narcotics. If you want to ask him pointed questions about whether he relied on them for legal judgments, ask him that. But let's not ask

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Fishman-cross

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ambiguous questions because the answers will be ambiguous.

Did you rely on them for the judgment about what the Constitution and the law required as to minimization?

THE WITNESS: No, your Honor, I did not.

THE COURT: You are sure?

THE WITNESS: Yes.

Q You relied on Mr. Kaufman for that?

A Among others in my office, yes.

Q Now, in view of the fact that you had to turn to Officer Eaton and his brothers to render to you the underlying significance of conversations that were taped, you didn't undertake yourself to listen to the tapes, isn't that so, as a regular practice?

MR. FEFFER: This has been asked over and over again, about his listening to takes and how often. I object.

MR. FEITELL: Now I am beginning to know why. There is another dimension.

THE COURT: You may answer.

Is that the reason you didn't listen?

THE WITNESS: Is what the reason I didn't listen?

THE COURT: That you were relying on the expertise of these officers?

1 THE WITNESS: That was one of the reasons,  
2 yes.  
3

4 Q So you had no procedure developed at that  
5 time to screen or to double check the accuracy or the  
6 good faith of the officers in their reports to you to the  
7 effect that they were limiting themselves to good faith  
8 listening, correct?

9 A Correct. I gave them instructions. They  
10 said they would follow them. I accepted on faith that  
11 they would follow them. I went over the transcripts.

12 Q Two years later, is that your practice now?

13 MR. FEFFER: Objection, your Honor.

14 THE COURT: I will allow it.

15 A Yes.

16 Q You don't listen to tapes now either, do you?

17 A That's correct.

18 Q Whatever they tell you as to the extent of the  
19 relevance and minimization, you go by that, right?

20 A I take on faith the police officers working  
21 with me on investigation will follow the instructions  
22 I give them and will not lie to me about whether or not  
23 they followed them, yes.

24 Q So the supervision that you give to the  
25 officers with respect to minimization is a verbal instruc-

tion which you expect to be followed, right?

A Correct.

Q Do you still hand down written instructions in connection with tapes, with tapping, as --

A I have done that and other assistants did that. I was the first one to draw up written instructions in my office.

Q And you revise them as you go along?

A Rewrote them to take out specific references to this case. The other instructions I give out, unless we know where boyfriend or girlfriend complexities are involved, we don't include that. I don't think there is a legal privilege, as husband and wife or doctor and patient.

Q Were you on trial on December 20th?

A I do not believe so.

Q Didn't you tell us before you were busy on trial at or about that time?

A Well, I can tell you, if you like. I can give you a rundown on what I did in the office from December 8th until December 20th.

Q No. I would like to know when you said before that you were on trial, you can verify that from your diary?

rda35

Fishman-cross

1  
2 A No. In fact, the bulk of the time from the  
3 8th to the 20th I was on duty in the complaint room at nights  
4 for seven days. I also came into the office during  
5 the afternoon on a number of occasions to do some paper  
6 work, occasionally to go to court in the afternoon on a  
7 case. I think I was in court a few times in the  
8 afternoon, and to work on investigations, including the  
9 investigation involving this wire tap.

10 Q But that involves coming to work at about a  
11 quarter after 7 and adjourning at about 11:30 or so by  
12 night?

13 A The complaint room?

14 Q Yes.

15 A No. Roughly 6 -- I will withdraw that.

16 Q You said you worked in the complaint room?

17 A At nights, 6 p.m. to 11, 11:30.

18 Q Doesn't the complaint room close at 9 o'clock?

19 A I think it does now. It didn't then. I  
20 have the times written down in my diary, when I got out  
21 each night, if you are interested.

22 Q So you didn't work beyond 11, right, for the  
23 most part?

24 A Correct, 11 p.m. was the latest I worked,  
25 apparently, in the complaint room.

1           Q       You had days off, right, on the nights that  
2                    you had to work from approximately 7 until 11, right?  
3

4           A       That's correct.       I spent two days during  
5                    that week at my reserve unit and I came in at 2 o'clock  
6                    in the afternoon on one occasion, I came in at 5 o'clock  
7                    in the afternoon on another occasion, and I didn't make  
8                    any report of my activities during the days.       The rest  
9                    of the period, Monday through Fridays, I was working  
10                   nights.

11          Q       Were you on trial the week before?

12          A       I had some nonjury trials in that period of  
13                   time.       I don't recall.       I could study the diary and  
14                   tell you perhaps on what days they occurred.       I did  
15                   not have any jury trials.       My first jury trial was  
16                   late January, I think.       But I was preparing a number of  
17                   cases for motions to suppress.

18          Q       So it is not factual then, that you were on  
19                   trial during the period of time when you got news that  
20                   Della Valle was different from Steve or Beansie?

21          A       Apparently I was not on trial between December  
22                   8th and December 20th, that is correct.

23          Q       And you work with Mr. Grajales, don't you?

24          A       I did then.       He is now back in the New York  
25                   County office.

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Q He was more or less associated with you, you had him in on conferences?

A Yes. He was in effect my superior.

Q He was interested in these cases too, right?

A Grajales is interested in lots of things. Yes, he was interested in these cases.

Q In Mr. Hogan's office when one assistant is overloaded and he needs help from an associate, he can call upon him for it?

A Mr. Hogan's office all of his assistants are overloaded.

Q To help each other?

A Yes.

Q Did you ask Mr. Grajales to give you a hand because you were overworked?

A A hand for what?

Q With your obligations in connection with this case, to get the order out for Judge Birns.

A Are you talking about before December 8th or after December 8th?

Q Any time through December.

A I don't recall in what detail I discussed with Don Grajales the aspects of the case. I know we went over the probable cause before we got the warrant and

rda38

Fishman-cross

1 I conferred with him on occasion while the wire tap was  
2 going, but I really don't understand precisely what your  
3 question is directed at.  
4

5 Q Isn't your reputation, with all due respect to  
6 you, in the DA's office kind of notorious that you don't  
7 do paper work?

8 A When I think of all the paper work I've done,  
9 I'd be heartbroken if that's the kind of reputation I  
10 have.

11 Q Did I ever write letters to you begging you  
12 to turn out papers in a case?

13 MR. FEFFER: Objection, your Honor.

14 THE COURT: Look, you'd better finish up be-  
15 cause I am going to make you sit down pretty soon. Now  
16 finish up.

17 Did you ever write letters? Now, look, there  
18 is a limit beyond which I am not going to let you take  
19 me, Mr. Feitell. Ask pointed questions and be sure  
20 that they are meaningful. It's late on Friday and let's  
21 move on.

22 Q On December 20th, when you had this long confer-  
23 ence in your office, did you call up the pool to bring  
24 in a girl to dictate to her anything?

25 THE COURT: Next question.



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Q Were you on trial --

THE COURT: Look, Mr. Feitell, I don't want to hear any more about his work habits.

MR. FEITELL: That's all you had to say, Judge.

Q Did you say, after you got that important news on December 20th, that you were in daily contact with Mr. Eaton? Is that what you testified to on direct?

A I was in virtually daily contact with Eaton, yes.

Q And you made notations of that, too?

A Sometimes I noted down that he would call, sometimes I did not.

Q Isn't it a fact that you were just going to let the order run its way out and present the whole thing to Judge Birns after taking your time to review it over the Christmas holidays? Isn't that what you really had in mind?

A No, sir, it was not.

Q You mean you were just so overburdened you couldn't get it out. Is that what you are telling us?

A Around January 2nd it became apparent that we weren't going to get an amendment that would last

rda40

Fishman-cross

1 until January 6th and still get a renewal so we could  
2 keep listening as of January 6th. So at about January  
3 2nd or 3rd I decided we will put it all into one affi-  
4 davit instead of submitting two. If that is what you  
5 are asking me, then that's the answer.  
6

7 Q That realization became apparent to you on January  
8 2nd?

9 A I think it was after New Year's that it became  
10 apparent that there was no way we were going to be able  
11 to split two affidavits.

12 Q In the 12 days before that, could you particu-  
13 larize for me what work you did to prepare the affida-  
14 vit?

15 A To an extent, yes.

16 Q Incidentally, have you notes regarding that?

17 A Just what I am reading to you from my diary.

18 Q Anything in your diary about drafting anything  
19 on the 20th or the 21st, 22nd?

20 MR. FEEFFER: I believe Mr. Fishman is looking  
21 through his diary for that very purpose.

22 A Mr. Feltell, I have the word "paperwork" in  
23 answer to a previous question of yours, on almost every  
24 page in my diary. That paperwork might have referred  
25 to any number of things, including this case. I can't

rda41

Fishman-cross

1 tell you which case as opposed to something else. I  
2 have the entry on the 24th that Sergeant MacDonald  
3 called with the tape recorder problem. I have a note  
4 that Eaton was coming on Tuesday. I left fairly  
5 early to visit my in-laws at Christmas Eve, and I spent  
6 Christmas weekend on Staten Island with my in-laws.  
7

8 Q What day of the week did Christmas fall on?

9 A Saturday. I spent Saturday and Sunday  
10 and, I believe, Monday, the 27th, with my in-laws.

11 Q You took Monday off?

12 A Yes.

13 On Tuesday, the 28th, in at 10 a.m., with  
14 Detective Eaton reviewing Della Valle wire tap and extension  
15 to Beansie, Stephen Dellacava.

16 So by the 28th we had at least a tentative name  
17 for him. That was 10 to 2:30 p.m. I was working on  
18 a search warrant for another case.

19 Then at 3:30 in the afternoon I was working on  
20 a memorandum to another person in the bureau about an  
21 extension of this wire tap.

22 Q Of what wire tap?

23 A Diane's Bar.

24 Then from approximately 5:30 to 6:20, again  
25 I was working on a memorandum on an extension to the wire

tap.

Q Which wire tap?

A The wire tap means this wire tap.

Q You were working on the memorandum?

A It started out in memorandum form, it wound up being in effect a basis for the affidavit.

On the 29th I conferred with Mr. Andreoli about whether or not we could extend the wire tap. He agreed we could.

Q You weren't sure you could extend this and you had to go to him for that?

A I explained I conferred with other members of my office every step of the way.

Q How long did it take to talk to Mr. Andreoli?

A I don't have the time.

Q Did you spend the whole day talking to him?

A No.

Q You knew that this case involved a matter of some moment. You knew you were under an obligation to get an amendment, didn't you?

A Yes.

Q You knew that on the 20th, right?

A Correct. Would you like me to continue?

Q That won't be necessary.

rda43

Fishman-cross

1           A       Thank you.

2           Q       With respect to Beansie, did you give any  
3           instructions to the officers on December 20th to the  
4           effect that in view that you didn't have authority to  
5           listen to his conversations and required an amendment,  
6           that they should minimize his conversations in particular?  
7

8           A       I told them that they could continue to  
9           listen to what apparently were narcotics-related conver-  
10          sations that Beansie had.

11          Q       With respect to the arrest carried out on  
12          February 1 or February 2, 1972 up near Rockefeller  
13          Center of Guarino and Dellacava, do you know anything  
14          about that?

15          A       Did I know then or now?

16          Q       Did you know then?

17          A       Quite a bit.

18          Q       Did you order those arrests before they took  
19          place?

20          A       No, I did not.

21          Q       Did you know that the arrests were going to  
22          happen?

23          A       Did I know that it happened?

24          Q       That they were going to happen.

25          A       I knew there was a possibility.

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Q Did you get some notice beforehand that the officers had listened in on some valuable information and were going out to make an arrest?

A Yes. As a matter of fact, I think either the last two or three days in January or the first couple of days in February there were a number of calls which I was kept on an hourly basis almost aware of that apparently there was going to be a package passed from Dellacava to John Brown.

Q You didn't know exactly when it was going to happen, right?

A In effect I knew as soon as the officers knew. Any time they got a lot they would call me.

Q Which took place around the end of January, correct, that you first started getting those calls?

A You are talking about the events specifically leading up to the arrest. I believe that's when they started.

Q So they told you about a couple of conversations or more than had come to their attention, correct?

A They kept me up-to-date, day to day, hour to hour, what was happening.

MR. FRITELL: May I get an answer to a question instead of a narrative of something that is not

responsive.

THE COURT: Let me hear the question.

(Question read.)

THE COURT: Answer yes or no.

A Yes.

Q You found out about these conversations in each instance shortly after they occurred, right? They would call you?

A Yes.

Q They were in touch with you on a daily basis, right?

A Yes.

Q That was Eaton and Hill, correct?

A Mostly Eaton; also others.

Q So you had some reason to believe that, as the saying goes, with respect to narcotics, the narcotics were going to go down pretty soon, right? The transaction was going to go down, right?

A Right.

Q And you had reason to believe that Mr. Della Cava was going to be involved in it, correct?

A Yes.

Q And Mr. Guarino was going to be involved in it, right?

1           A       I don't know if we learned that in late January.  
2  
3       I know we knew about it on February 3rd.

4           Q       Didn't you just tell me a few seconds ago  
5       that you knew about these things from telephone calls  
6       at the end of January?

7           A       Mr. Feitell, I don't have all the transcripts  
8       in front of me.     I think the phone calls leading up to  
9       this deal were intercepted the end of January and into the  
10      first two days of February.

11          Q       Did you tell the officers to come in and you  
12      were going to draft your legal paperwork and draft a  
13      warrant for them to make a search warrant for Mr. Della-  
14      cava?

15          A       No.       We discussed at length the search  
16      warrant for Mr. Brown's apartment, however.

17          Q       Did you produce one for him?

18               MR. FEEFER:     Objection, your Honor.           Does  
19      Mr. Feitell represent Mr. Brown as well?

20               THE COURT:     Sustained.

21          Q       So that the information that you had received  
22      from the officers up to that point was factually insuffi-  
23      cient to set forth probable cause, that's why you decided  
24      not to go for a warrant for Dellacava, right?

25          A       Incorrect.



rda47

Fishman-cross

Q You had probable cause as to him, right?

A In my opinion, yes.

Q You decided --

MR. FEITELL: Withdrawn.

A In my opinion --

Q I have your answer, thank you.

A Not a completely accurate answer.

THE COURT: If it is not completely accurate, make it accurate, please.

A I think that shortly before the events of February 3rd we probably had cause to obtain a search warrant on Mr. Brown's apartment and to make arrests, should what we expected to happen happen, on Mr. Guarino and Mr. Dellacava.

Q You expected something to happen with regard to Mr. Guarino and Mr. Dellacava?

A Yes.

Q What was that?

A We expected Dellacava to pick up a package somewhere, drop it off at Mr. Brown's house and meet Mr. Guarino at Rockefeller Center.

Q And you knew about that, that that was going to happen, and you knew that was supposed to happen, right?

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A That's correct.

Q Now, then the arrest of Guarino and Dellacava took place at about what time on February 2nd or 3rd, do you know?

A I found out about it at 10:45 p.m. I think it occurred some time after 10 o'clock at night.

Q And can you tell us what happened to that case?

A The defendants, including Mr. Brown, were arrested and charged with conspiracy in the second degree. They were arraigned, the case was adjourned a few times. Then I appeared --

Q Who adjourned the case, you or the defendants?

A Probably me.

Q Did you ever present it to the grand jury?

A No. I dismissed it in Criminal Court with leave to eventually present it to the grand jury.

Q You got leave from the court under a section of the CPL to present it to the grand jury?

A I stood up in court --

Q Is that what you did?

A I will tell you what I did, if you like.

Q Did you do that?

A Under the CPL I asked the judge.

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Q For leave to present it to the grand jury?

A I said, "Your Honor, at this time the People move to dismiss the charges against the defendant with leave to ultimately present it to a grand jury," and the judge said the motion was granted.

Q The matter was dismissed, correct?

A Correct.

Q You knew at that time that you were not going to present it to the grand jury, right?

A I knew I was not going to present it at that time to the grand jury, right.

Q But you did not tell that to the court, did you, or to the defendants, did you?

A I don't recall being asked when, if ever, I plan to present it to a grand jury.

Q You held that back, didn't you?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q And you never did present it to a grand jury, did you?

MR. FEFFER: Objection, your Honor.

THE COURT: On what ground?

MR. FEFFER: Relevancy to monitoring a wire tap at Diane's Bar.

THE COURT: Sustained.

BY MR. FEITELL:

Q When for the first time did you give my client, Stephen Dellacava, notice that he had been wire tapped?

A I believe the U. S. Government gave Mr. Dellacava either on or shortly after his arrest in April of 1973.

Q Do you know what form that notice was in?

A I wasn't there when it was given.

Q Did you tell the government to give notice?

A I had been in contact with agents of the United States Government prior --

Q Can you give me an answer to that simple question?

A Did I tell them in what form to give it?

Q Yes.

A No.

Q Did you tell them to give notice?

A I don't recall if I told them or assumed they would or exactly what, no, sir.

Q Do you know if, at the time Mr. Dellacava was arrested on April 13, 1973, he had been given notice regarding the termination of these taps?

A I know for a fact that he knew. I also know

1  
2 for a fact he did not legally -- did not get legal  
3 notice from us, not in writing from us.

4 Q You mean before he was arrested on April 13th  
5 he knew that he had been wiretapped, he had received  
6 notice in some way?

7 A Yes.

8 Q What information are you relying on when you  
9 say that?

10 A I'm relying on information intercepted off  
11 subsequent eavesdropping warrants.

12 Q That on April 13, 1973, when he was arrested  
13 on 86th Street, he had knowledge that there were  
14 wire taps in this case?

15 A Oh, yes.

16 Q And you have that information as a result of  
17 subsequent wiretaps to Diane's Bar?

18 A Not subsequent to his arrest in 1973; subsequent  
19 to the wire taps involved. In other words, when Mr.  
20 Dellacava was arrested this year in the case he is currently  
21 a defendant in. At that time I know that he knew  
22 that he had been subject to previous eavesdropping war-  
23 rants.

24 Q That's why you didn't give him notice?

25 A I didn't say that.

Q Did you tell that to the government?

THE COURT: I am not much interested in whether he told it to the government. But I was interested in the other thing.

Q Did Mr. Kaufman or, in your studies, did you ever learn that --

THE COURT: That question is not going to be good when you get through asking it. But the record now indicates, I don't know whether you should have asked it, that Mr. Dellacava knew on or before April 13th that he had been the subject of eavesdropping.

Q Can you tell me where he first garnered that knowledge?

A Very shortly after February 3, 1972 the phone was completely disconnected from Diane's Bar. From that I infer that he had knowledge that that bar's telephone was wire tapped. I know he had knowledge of a subsequent eavesdrop because I know of Mr. Guarino's finding out, and I think Mr. Dellacava's finding out it was on tape.

Q You mean a phone was disconnected in Diane's Bar and that's how you know he knew that place was being tapped?

A From that I infer that he knew or

suspected or was sure it was being tapped, yes.

Q This was an inference that you drew, right?

A Correct.

Q Nothing from what he said on a tap, right?

A Correct.

Q Do you know why that phone was disconnected?

A Do you want my personal opinion?

THE COURT: Let's scrub all that.

A Now that I know the basis on which he said it, you can strike my inference. I do not know.

MR. FREITHL: That's all I want. Counsel tells me the bill wasn't paid and the phone was pulled out.

THE COURT: ~~Is Counsel~~ tells you that, even though he is not under oath, I accept it. Rightfully, I'm an easy mark. I'm crossing it out.

MR. FEEFER: No questions.

THE COURT: All right, Mr. Fishman, have a good weekend.

THE WITNESS: Thank you very much, your Honor. You, too, in spite of Sunday.

(Witness excused.)

THE COURT: All right, 10 a.m., Sunday.

(Adjourned to September 23, 1973, 10:00 a.m.)

1 rdal

2 UNITED STATES OF AMERICA

902

3 vs.

4 JOHN CAPRA, et al.

5 New York, September 23, 1973,  
6 10:00 a.m.

7 Hearing resumed.

8  
9 --  
10 Present:

11 Mr. Feffer  
12 Mr. Feld  
13 Mr. Slotnick  
14 Mr. Feitell  
15 Mr. McAlevy  
16 --

17 THE COURT: Let's proceed.

18 MR. FEFFER: One preliminary matter. With  
19 respect to Government's Exhibit 4, which is the case folder  
20 that you examined in camera, the government has no objec-  
21 tions to providing defense counsel with each of the  
22 pages in its entirety that you have put clips on. I'll  
23 do that hopefully today or first thing tomorrow morning.

24 THE COURT: All right.

25 MR. FEFFER: The government calls George Eaton.



1 rda2

2 G E O R G E E A T O N, called as a witness

3 by the government, being first duly sworn, testified

4 as follows:

5 DIRECT EXAMINATION

6 BY MR. FEFFER:

7 Q Mr. Eaton, you have testified before, I  
8 believe, that you have been with the New York City Police  
9 Department for a number of years. Is that correct?

10 A That is correct.

11 Q And, again, I want to direct your attention  
12 at this point to November of 1971. Can you tell the  
13 court what your duties were at that time?

14 A I was assigned to the Special Investigations  
15 Unit, Narcotics Division, to investigate narcotics  
16 violations.

17 Q At that time were you working on an investiga-  
18 tion involving the activities, narcotics activities, of  
19 a Joseph Della Valle?

20 A Yes, I was.

21 Q With respect to this, did you have occasion  
22 to meet with an assistant district attorney named Cliff  
23 Fishman?

24 A Yes, sir.

25 MR. SLOTNICK: May we have the witness testify

without being led?

THE COURT: No. Get up when it is important, not trivia like this.

Q I want to direct your attention to the 8th of November, 1971. On that date did you meet with Mr. Fishman?

A Yes, I did.

Q Can you tell the court essentially what you discussed with him?

A I believe Detective Finelli and Detective McCrory and myself went to Mr. Fishman with information we thought --

THE COURT: I didn't hear those names, officer.

THE WITNESS: Detective McCrory and Detective Finelli.

A We went to Mr. Fishman with information that we thought was sufficient to get an eavesdropping warrant on Joseph Della Valle.

Q Now, specifically, were you concerned with getting warrants on his home telephone and a telephone located at Diane's Bar?

A Yes.

Q Did you meet with Mr. Fishman on other occasions during November and early December in connection with this

1 rda4

Eaton-direct

906

2 matter?

3 A Yes.

4 Q Approximately how many times?

5 A Five, six, seven times.

6 Q Now, were affidavits finally submitted in  
7 support of an application to intercept telephone conver-  
8 sations relating to narcotics of Joseph Della Valle over  
9 telephone 722-9595, located in Diane's Bar, and telephone  
10 number 824-6406, located in a residence in the Bronx?

11 A Yes, they were.

12 Q Was an order in fact signed authorizing such  
13 interceptions?

14 A Yes, it was.

15 Q I want to direct your attention now, Mr. Eaton,  
16 to the wire tap at Diane's Bar. On what date did this  
17 particular tap become operative?

18 A December 9, 1971.

19 Q And during the course of its operation did you  
20 personally take part in monitoring conversations over  
21 that telephone?

22 A Yes, I did.

23 Q Did you and your fellow officers -- that would  
24 be the monitoring officers at Diane's bar -- did you re-  
25 ceive instructions on the procedure to follow in monitor-

ing these conversations?

A Yes, I did.

Q And who gave you these instructions?

A Mr. Fishman gave us instructions and Herman Kaufman, in the Appeals Bureau of District Attorney Hogan's office.

Q Did Lieutenant Hill instruct you on occasion?

A Yes.

Q I want to direct your attention now to November 23, 1971. On that date did you meet with Assistant District Attorneys Fishman and Kaufman?

A Yes, I did.

Q And can you tell the court what instructions Mr. Kaufman relayed to you or related to you at that particular meeting with respect to monitoring conversations to be heard at Diane's Bar?

A Basically his instructions were to be extremely careful because it was a public telephone and many uninvolved persons probably would be using the telephone.

Q Did he indicate anything with respect to who you were entitled to intercept, whose conversations you were entitled to intercept?

A Yes. I left his office thinking I could only intercept the conversations of Joseph Della Valle.

rda6

Eaton-direct

Q I will direct your attention now to December 8, 1971. Did you have an occasion on that date to meet with Fishman, Hill and McCrory?

A Yes, I did.

Q Can you tell the court what transpired at this meeting?

A Well, this was the day the order was signed. I am not sure of the sequence but I think we were with Mr. Fishman for about three hours, going from his office to Mr. Hogan's office, to see the judge. All during this time we discussed the monitoring of the machine. He said, "Try to determine who the person is on the phone. If it is not the subject, turn it off, turn off the machine."

Q In other words, if it is not Joseph Della Valle, turn the machine off?

A That is correct. He explained the privileged conversations.

Q What did he say with respect to privileged conversations, if you can recall?

A Conversations between a lawyer and his client, a priest and a parishoner or a rabbi and his parishoner, a doctor and a patient, and husband-and-wife conversations.

1                   Q       And these conversations were not to be inter-  
2                   cepted?  
3

4                   A       That is correct.

5                   Q       Did he say anything with respect to leaving the  
6                   machine running?

7                   A       Under no conditions was the machine to be run  
8                   automatically.     If you were monitoring the machine, you  
9                   would record the same thing.     If you did not record, you  
10                  did not monitor.     If you didn't do both, you shut the  
11                  machine off, for whatever reason it was, if it was privi-  
12                  leged or not the party or whatever.

13                  Q       Was there any conversation with respect to  
14                  voice identification of the subject Della Valle?

15                  A       Yes, there was.

16                  Q       What did Mr. Fishman instruct you in this re-  
17                  gard?

18                  A       Well, he said, "Try to determine if it's him.  
19                  If he gives his name or if you can identify the voice."

20                             I told him I would have a problem identifying  
21                  the voice.

22                  Q       Of Della Valle?

23                  A       Yes.

24                  Q       Did Mr. Fishman say what you were to do if you  
25                  overheard conversations of other people relating to nar-

rda8

Eaton-direct

1 cotics, people not named in the order?

2 A I honestly don't recall if he did.

3 Q Did he say anything to you or give you instruc-  
4 tions what you should do if you heard conversations relating  
5 to other crimes than narcotics?

6 A To notify him and he would take whatever action  
7 was necessary.

8 Q Did he tell you in general to keep him posted  
9 during the course of the monitoring?

10 A Yes, he did.

11 Q Now, with the instructions that you received  
12 from Mr. Fishman, do you know whether they were passed  
13 on to each of the monitoring officers before they began  
14 the monitoring process?

15 A Yes, they were.

16 Q Were you one of the officers who passed these  
17 on?

18 A Yes.

19 Q You testified that the wire tap at Diane's  
20 became operative on the 9th of December, 1971. Did  
21 the monitoring officers record all the conversations that  
22 were intercepted?

23 A They recorded everything that was intercepted  
24 up to the point where the machine would be cut off. Not  
25

1 rda?

Eaton-direct

911

2 every conversation that wasn't a complete conversation.

3 Q In other words, there were times when they  
4 shut the machine down when the parties were speaking, is  
5 that correct?

6 A Yes.

7 Q Will you describe to the court the process used  
8 to record or monitor conversations at Diane's Bar?

9 A The recorder?

10 Q Yes, the entire process, what you would do  
11 when a telephone call came through to Diane's Bar, the  
12 process that you used in monitoring.

13 A Well, the machine was set up in an automatic  
14 mode. In other words, if the line became activated  
15 the machine would go off and it would record and you  
16 could hear the conversation at the same time. That's  
17 by -- there are two silver knobs and you push them to the  
18 front of the machine and it sets it up for record and  
19 monitor. If you determine that it's the subject or  
20 you think it's the subject, it records and you monitor  
21 at the same time. If you determine it is not, the  
22 knob on the right side of the machine, you throw it up,  
23 it takes the machine out of record and monitor. The  
24 motor is on but the machine doesn't record and it doesn't  
25 amplify.



1           Q       Now, was a pen register used in this  
2  
3 process to find out the telephone numbers filled out?

4           A       Yes, it was.

5           Q       Can you tell the court the function of the pen  
6 register?

7           A       The pen register is a machine that utilizes  
8 a white paper tape and when a number is dialed from the  
9 phone that's tapped it imprints the numbers.     In other  
10 words, if it is a 2, it imprints 2, skips a couple of spaces,  
11 3, three dots, skips some spaces, and so on.

12                   And incoming calls, there is a series of dots,  
13 I don't know how many, 20 dots or so.     Every time it  
14 rings it does this; then it skips; then it dots it out  
15 again, until the phone is picked up or they stop ringing.

16                   Also, when there is an incoming call coming  
17 in the pen register activates just prior to the initial  
18 ring.     The same thing if somebody picks up the phone.  
19 The pen register skips ahead one space or so to make room  
20 to separate it from the previous number.

21                   At the end of a conversation, when the phone  
22 is put down, hung up, the pen register does this again:  
23 skips to leave room for the next number.

24           Q       How many people generally at the plant were  
25 monitoring calls?

1 rdall

Eaton-direct

2 A Well, in the beginning of Diane's Bar we only  
3 had two people, I think, monitoring the machine at one  
4 time.

5 Q Would each of these people monitor the calls  
6 while the calls were coming in?

7 A Yes.

8 Q Were there other duties that officers performed  
9 at the plant other than actually listening to or recording  
10 conversations?

11 A Yes, there were.

12 Q Can you tell the court what those were?

13 A Well, some surveillance was conducted, but I  
14 have to reiterate that we were shorthanded. At times  
15 there was only one person in the plant at Diane's Bar.  
16 There was surveillance and as a result of surveillance  
17 you get licence plate numbers and different other things.  
18 As a result of the tap you get telephone numbers.  
19 All these things have to be prepared on Police Department  
20 forms to find out who owns the phone and the license plates  
21 have to be checked with our information unit. And  
22 there is regular, routine paper work you would have to do  
23 every way.

24 Q This would be done by one of the two officers  
25 generally who were present?

1           A     Right.

2           Q     After a reel of tape was completed what was  
3                 done with that particular reel of tape?  
4

5           A     Well, eventually it was brought down to the  
6                 Investigations Bureau of Mr. Hogan's office and put in  
7                 the safe.

8           Q     Did you make copies at any time during the  
9                 course of the wire tap that you can recall?

10          A     Not during the course of the wire tap.     Sub-  
11                 sequently copies have been made.

12          Q     Now, were log sheets concerning information  
13                 about the intercepted calls maintained by the monitoring  
14                 officer?

15          A     Yes, they were.

16          Q     Was every telephone call that was intercepted  
17                 logged?

18          A     Yes.

19          Q     And can you tell the court essentially what in-  
20                 formation was put down in the logs relative to each conver-  
21                 sation that was intercepted?

22          A     I think the first entry would be the time.     At  
23                 the top of the page you put the date, you identify the  
24                 recorder that is being used, the reel of tape that is on  
25                 the machine, possibly who is monitoring the machine, and  
                then in the left margin you would put down the time, whether

1        it was incoming -- you would indicate that by "inc.,"  
2  
3        whether that specific monitor put down.

4                If it was an outgoing call, there would be a  
5        telephone number there, the number that was dialed.

6                Q        This information would come from the pen  
7        register, the outgoing telephone number dialed?

8                A        Yes, it would.        Then there would be an indi-  
9        cation of "in," being the party that was on the phone  
10       that was tapped, and another one that would say "out";  
11       that would be the party either receiving or making the  
12       call to the tapped phone.        And to the right of that  
13       would be whether it was nonpertinent or pertinent.        And  
14       in some cases notes were made just underneath that entry,  
15       a brief synopsis of what the conversation involved.

16                Q        Now, this information was provided by the in-  
17        dividual or individuals actually monitoring, is that cor-  
18        rect?

19                A        That is correct.

20                Q        Was it done simultaneous with the call coming  
21        in or immediately thereafter?

22                A        Well, it depended.        They could have wrote  
23        it as he heard it or he could have played it back and wrote  
24        it.

25                        (Government's Exhibit 8 was marked for identi-

1                    fication.)

2                    Q        Officer, I show you 1B for identification and  
3                    also Government's Exhibit 8 for identification and ask  
4                    you to look at each and to identify them, if you can.  
5

6                    A        These are the logs of --

7                    Q        Can you first describe 1B and then describe  
8                    8.

9                    A        1B is the opening day, December 9, 1971, at  
10                    1:30 p.m. . . The plant on Diane's Bar was opened at that  
11                    time.        And the logs contained herein run up to  
12                    Thursday, January 6, 1972, at about 12:35 p.m.

13                    Q        So these would be the logs through January the  
14                    6th, is that correct?

15                    A        Up until 12:35 p.m. in the afternoon.

16                    Q        How about 8 for identification?

17                    A        These are the follow-up or the logs  
18                    or the transcripts of conversations that occurred on  
19                    January 6th through February 4, 1972.

20                    Q        These are the logs for the next period of  
21                    time, is that correct?

22                    A        Yes, that's correct.

23                    MR. PEPPER:        Your Honor, the government  
24                    offers 1B and 8.

25                    MR. SLOTNICK:        No objection, your Honor.

MR. FEITELL: No objection.

(Government's Exhibit 1B and Government's  
Exhibit 8 were received in evidence.)

BY MR. PEPPER:

Q Officer, did you generally review the logs  
and also listen to recorded conversations?

A Yes, I did.

Q Now, can you tell the court what was the purpose  
of this review?

A Well, part of it was to see if anything  
incriminating had been missed and any conversations that  
indicated that the subject was in the bar or he was going  
to do something that night. I did it for purposes of  
the investigation, to see if there was anything in there  
that might have been marked nonpertinent that perhaps  
was pertinent.

Q Did you generally review the logs and the  
recordings each day at some point or every other day?

MR. FEITELL: I object to this, your Honor,  
as unnecessary leading. I think that this is unneces-  
sary leading.

THE COURT: Let me hear it again.

(Question read.)

THE COURT: Well, why don't you just ask him

what his practice was in reviewing the logs.

Q What was your practice with respect to reviewing these logs in terms of when it was accomplished?

A The logs I could review every day or every other day, whenever I got to the plant. Playing back the tapes took a little longer. I always didn't have time to play back a tape. I could have been a week, week and a half, playing back a reel.

Q And did you make transcripts, written transcripts, of certain of the conversations that were recorded?

A Eventually I did, yes.

Q Did you transcribe every conversation that you considered to be pertinent?

A Not every conversation, no.

Q Officer, in the course of your monitoring did you encounter any difficulties with respect to the telephone conversations intercepted?

A Yes.

MR. SLOTNICK: I object to the form of the question. I don't know what "difficulty" means.

THE COURT: Let's see what he tells us.

A Yes, I did.

Q Can you tell the court what these were?

A Well, a lot of conversations were very short-

rdal7

Eaton-direct

and if you took them for their worth, they didn't make any sense at all.

Another problem was that it was a public phone, and if one party answered it, there was always a possibility that the first back and forth, "How are you? What are you doing? How is everything?" after that the other party would ask for whoever they were looking for. In other words, if our subject was in the place and somebody else answered the phone, there was always the possibility that our subject might get on in the next 10, 15, 20 seconds. In other words, the two parties knew each other but the guy that was calling didn't want the party that answered. It was the general "Hello. How are you?" talk. After that he would ask for his party. So we would have to wait at least 30, 40 seconds to see if this was just going to be a conversation between these two or they really wanted somebody else.

There was also a problem with voices. Many of the voices in the bar sounded the same, and the conversations were so short you couldn't determine who they were unless they gave their name.

Q Did many of the people use nicknames?

A Yes, they did. There were many nicknames used in that bar.



1           Q       Now, was there any problem encountered with  
2           respect to identifying the voice of Joseph Della Valle?

3           A       Yes, there was.

4           Q       Can you tell the court what that was?

5           A       I heard his voice on two previous occasions  
6           in a public telephone booth on a street corner in Man-  
7           hattan.  
8

9           Q       How long were each of these conversations,  
10          approximately?

11          A       I didn't time them.     Forty, 50 -- a minute,  
12          minute and a half, I don't know.     I didn't time them.  
13          That had been over a month before we actually installed  
14          the tap.     So I did have a problem there.

15          Q       Were you the only officer, the only monitoring  
16          officer who had overheard the voice of Joseph Della Valle  
17          prior to the tap being monitored, as far as you know?

18          A       As far as I know, yes.

19          Q       During the first week or approximately the  
20          first week of monitoring conversations at Diane's were  
21          several conversations of an individual referred to as  
22          Stevie or Beansie overheard?

23          A       There were conversations intercepted with a  
24          male -- I don't know whether he used the name then but  
25          he was later identified -- the short conversations that

1 didn't make any sense. I don't know if there was a name  
2 involved in those conversations or not. But the  
3 same male, whoever he was at that time, used the name  
4 Steve or Beans in other conversations.  
5

6 Q Now, did you know the identity of this individual  
7 that we are referring to now as Stevie or Beansie prior  
8 to December -- prior to December 19th or 20th, in that  
9 area?

10 A No, I didn't.

11 Q Was there any speculation on your part at  
12 that time, and this is again the first week or so, prior  
13 to the 19th of December, as to who this individual Beansie  
14 or Stevie in fact was?

15 A Well, I kind of -- at one point in time I  
16 wasn't sure whether he could be Della Valle or not. Our  
17 information was that Della Valle operated out of the  
18 bar. And it turns out to be Mr. Dellacava, he operated  
19 out of the bar.

20 Q This is what you found subsequent to that?

21 A Yes. I mean the voice on the phone seemed  
22 to be there quite frequently.

23 Q Did you in fact, officer, again prior to the  
24 19th of December, believe that the voice identifying him-  
25 self as Stevie or Beansie could have been Della Valle?

1  
2 MR. FEITELL: Objection, your Honor. It  
3 is the ultimate issue.

4 THE COURT: Overruled.

5 A Yes. Particularly I conferred with two officers  
6 that had been up in the Bronx and had heard Della Valle's  
7 voice. They seemed to think it was him.

8 Q Now, did there come a time when you became  
9 aware of the fact that Joseph Della Valle and Beansie were  
10 two different individuals?

11 A Yes.

12 Q Can you tell the court when you became aware  
13 of this and how?

14 A On, I believe it was, December 19th I intercepted  
15 a phone call, a dial-out from the bar, by a male I  
16 believed to be Joseph Della Valle to a Spanish -- I  
17 believe a female and a male talking to a male, I'm not  
18 sure, and the conversation indicated that Della Valle wanted  
19 this Spanish guy to come down and get something. The  
20 Spanish guy indicated he was going to bring a woman with  
21 him, and Della Valle indicated he comes alone, he doesn't  
22 come with anybody, and try to get there right away.  
23 The guy said he couldn't get there for an hour, half hour,  
24 whatever it was.

25 The male, Della Valle, turned to somebody in  
the bar and said something, "How long are you going to be

here, Beans?"

I didn't hear the reply from inside the bar.

Then he turned and said okay to the Spanish guy, he said, "Come down 3:30, 4 o'clock."

I felt if this is Joseph Del Valle, then that other guy is somebody else, this guy Beans is somebody else.

Prior to this, a week before, I think about a week before, somebody monitoring the plant in the Bronx played a conversation for me or played one or two conversations for me in the plant in Manhattan of a recording of Joseph Della Valle's voice. And in that conversation there was a female and Joseph Della Valle. She called him Jimmy and referred to his nickname of Blacky.

In this conversation of the 19th he called himself Joey and the Puerto Rican guy called him Jim. So this kind of tended to lead me towards the fact that this was Della Valle and this guy Beans was somebody else.

Q Now, upon earning this information or over-hearing this conversation, did you have an occasion to speak with Lieutenant Hill?

A Yes, I did.

Q Can you tell the court on what date you did

1           this, if you can recall, and what you told him?

2           A       I believe it was on that day, I think it was  
3           a Sunday, I called him at home and told him, "I think we  
4           are intercepting the wrong guy here.    I think there is  
5           two different people here in narcotics."   And I explained  
6           the situation to him.   And he says, "Well, get a hold  
7           of Fishman and see what he says."

8           Q       On the 19th, when you intercepted this conver-  
9           sation, you indicated it was a Sunday.   Were you alone  
10          in the plant at that time?

11          A       Yes, I was.

12          Q       And did you in fact see Mr. Fishman with re-  
13          spect to this conversation?

14          A       I did, yes.

15          Q       Can you recall the date?

16          A       I believe it was the next day.

17          Q       Which would be the 20th?

18          A       I think so, yes.

19          Q       Now, can you relate the conversation that you  
20          had with Mr. Fishman on the 20th?

21          A       Well, I told him my beliefs.    I told him that  
22          I believe there is another guy in the bar that's in the  
23          narcotics business and he uses the name Beans or Steve.  
24          And I explained the telephone call of the day before.  
25

1                   He says, "Well, let's get this guy identified  
2                   and then we will amend the order."     He said to get the  
3                   transcripts up so he could have the conversations so  
4                   we could amend the order when we could identify him.  
5

6                   He also said that we should intercept the conver-  
7                   sations of this guy with the thought that we are going  
8                   to amend the order.

9                   Q     Now, did Mr. Fishman instruct you again to con-  
10                  tinue listening to the conversations of this individual  
11                  Beansie to attempt to ascertain his identity, if you  
12                  could?

13                 A     That is correct, yes.

14                 Q     Did you in fact subsequently identify who Beansie  
15                  or Stevie was?

16                 A     Yes, we did.

17                 Q     Can you tell the court how this was accomplished?

18                 A     I believe on December 21st -- I'm not really  
19                  sure -- there was a conversation between this male who  
20                  used the name Beans and a male Negro and it related to  
21                  something about -- I'm not really sure now.

22                 Q     Well, did anybody happen --

23                 A     There was a conversation.     To me it indicated  
24                  that something was going to happen on Thursday.     There  
25                  was a problem all through this period of obtaining nar-

rda24

Eaton-direct

cotics and some calls indicated that some customers were being turned down while others weren't. This was a call with a customer who later turned out to be Jack Brown, John Brown. And the call indicated that on Tuesday he would be going to see Mr. Brown, if my memory serves me right.

Q This would be Thursday, December 23rd?

A 23rd, right.

On the 23rd of December this male, Beans, called a telephone number in the Bronx, which came out to a candystore on Westchester Avenue near Wilkinson Avenue, and he spoke to a person later identified as John Capra. This conversation was pretty short. He asked for somebody -- he called there and asked for somebody, Johnny Hooks or Leo, and there was a long pause. There was nothing on the line for a long time. Then this male got on the phone and Mr. Dellacava, who was identified later, says, "Do I have anything to do tonight or do I have to bring a present to them people?"

Mr. Capra said, "Yes."

He said, "Should I come up and get it?"

And he said, "Yes."

I don't recall the time of this call; maybe 8:30. I'm not sure.

rda25

Eaton-direct

1 I went out and sat by the bar and nothing  
2 happened for a while. Then I went back again, and  
3 about 8 o'clock Joe Della Valle came around the block,  
4 he passed the bar three times in a half hour, the fourth  
5 time still within that half hour. He double-parked  
6 in front of the bar. He waved to somebody inside, and  
7 two minutes later the man who turns out to be Stephen Della-  
8 cava left the bar, got in the car, and drove up to --  
9 I thought it was the meat market at the time; it turned  
10 out to be a social club. He went into this darkened  
11 meat market and I believe somebody opened the door.  
12 There seemed to be other people inside. At least one  
13 person opened the door.

14 He came out carrying a set of keys. He went  
15 to a -- I think it was a black Lincoln Continental.  
16 He opened the trunk and took out a package, in my opinion  
17 the same size and shape as a half kilo of heroin. He  
18 took this package and put it in the trunk of his car.  
19 He reentered the social club or the meat market and came  
20 out a short time later. He made another stop --  
21 got in his car and drove, I think it is north or south,  
22 I'm not really sure which direction, and he stopped at the  
23 Pelham Chateau. He came out with a manila envelope.  
24 Then he drove eventually to the Cross Bronx  
25



Expressway, Henry Hudson Parkway south. All this time he was driving at a high rate of speed, 80, 85. At one point he almost had a collision. We lost him at 79th Street and West End Avenue.

Q In which direction was he headed when you lost him?

A He was heading south on West End Avenue and we had a little problem amongst ourselves. I thought that somebody else had him and somebody thought I had him, so he just got out from under us.

Q Now, did you subsequently learn the address of Jack Brown?

A Yes, I did.

Q Can you tell the court what that was?

A 180 West End Avenue. That's around 70th Street and West End Avenue.

Q So you lost him in the general area of Jack Brown's residence, is that correct?

A About nine blocks away, yes.

MR. PEPPER: Your Honor, at this time I think it would be helpful if we played about four, five conversations that relate to the testimony of this officer.

THE COURT: All right.

Q Let me just ask you a few preliminary questions.

1           You mentioned the word "present," is that correct?

2           A       That is correct.

3           Q       Had this word "present" been used in conversa-  
4                   tions between Jack Brown and Dellacava on the phone?

5           A       I believe it was, yes.       And it came up at  
6                   a later date too, when John Capra wanted to know if Stephen  
7                   Dellacava got his present from those other people.   I don't  
8                   know who those other people were.

9           Q       In other words, there was a subsequent conver-  
10                   sation in which Capra inquired as to whether his present  
11                   was received yet?

12           A       No, he wanted to know where his present was.  
13                   Apparently Dellacava was supposed to pick up a present for  
14                   him.

15           MR. SLOTNICK:   May we have the date of that  
16                   conversation?

17           MR. FEEFER:    I'll give all the dates of these  
18                   conversations.

19           Your Honor, there are five conversations.  
20                   The first one is December 21, 1971, at 2027 hours.       The  
21                   second one -- why don't we play that one and we can give  
22                   them to you as we play them.

23           THE COURT:    Okay.       What is the time and  
24                   date of the first?  
25

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2 MR. PEPPER: It is December 21, 1971, at 8:27  
3 p.m.

4 (Tape played.)

5 BY MR. PEPPER:

6 Q Can you identify the individual's voice who  
7 said that he would be up there Thursday with a present?

8 A In this conversation?

9 Q Yes.

10 A That was Mr. Dellacava and Mr. Brown.

11 Q Who was the individual who indicated he would  
12 come up and bring a present on Thursday?

13 A Steve.

14 MR. PEPPER: The next conversation is Decem-  
15 ber 23, 1971, and it is at 6:30 p.m.

16 (Tape played.)

17 MR. SLOTNICK: For the aid of the court and  
18 the record, that's attached thereto in my papers as Exhibit  
19 B, as part of the exhibit list in the original set.

20 MR. PEPPER: The next conversation is on  
21 December 29, 1971 at 6:50 p.m.

22 THE COURT: You mean the 29th?

23 MR. PEPPER: Yes, your Honor.

24 THE COURT: All right.

25 (Tape played.)

BY MR. FEEFFER:

Q Officer Eaton, the second conversation, can you identify the two people on the phone in that conversation?

A Stephen Dellacava and John Brown.

Q The conversation before this one.

A The previous conversation?

Q Yes, the second conversation on that reel.

A John Capra and Stephen Dellacava. There is an unknown male who answered the phone up at the candy-store.

Q Can you tell the court which party said, "You want me to pick it up up there or what"?

A Mr. Dellacava.

Q This last conversation here, you testified that it is Stephen Dellacava and Jack Brown, is that correct?

A That is correct.

Q And can you tell the court which party said, "Hi. Tell everybody I like my gifts"?

A Jack Brown.

MR. FEEFFER: Your Honor, there are two more conversations on this reel.

The next one is December 29, 1971, at 8:25 p.m. I do not believe that we have a transcript up for this conversation or the next one. We are getting

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transcripts for all these conversations and we will furnish them to your Honor.

THE COURT: Allright.

What is the date of this again?

MR. FEFFER: December 29, 1971, 8:25.

THE COURT: P.M.?

MR. FEFFER: Yes.

THE COURT: All right.

(Tape played.)

BY MR. FEFFER:

Q Can you identify the parties to that conversation?

A John Capra and Stephen Dellacava.

Q And which party is making an inquiry about the Christmas present?

A John Capra.

MR. FEFFER: I don't think it would be necessary at this time to play the last conversation on that reel.

THE COURT: All right. Let me say, while we are at this, that I assume you have or will very soon have transcripts of any conversations that you hope or plan to play at the trial.

MR. FEFFER: That is correct, your Honor.

1                   THE COURT:     I assume that they will very  
2                   quickly be given to defense counsel, and I will direct  
3                   everybody now, without knowing whether they are going to  
4                   be played or not, to expedite our proceedings by considering  
5                   together whether there is any dispute about the accuracy  
6                   of the transcripts, in accordance with which I am sure  
7                   all counsel are familiar.     If there are disagreements  
8                   about what the conversation is, quite apart from whether  
9                   it is admissible, I want to be notified of those dis-  
10                  agreements by counsel without delay so that I can proceed  
11                  to deal with such disagreements before the trial.  
12

13                 I think that has to mean, Mr. Feffer, that  
14                 you must serve these transcripts on all defense counsel,  
15                 not just those who may represent people involved in the  
16                 conversations.

17                 MR. FEFFER:     Fine, your Honor.     We will  
18                 try our very best to have those completed tomorrow or  
19                 Tuesday at the latest.     They are already picked out.  
20                 It is a question of having them typed up.

21                 THE COURT:     Duplicate them for everybody  
22                 and I want a set, too.

23                 MR. FEFFER:     Fine, your Honor.

24                 At this time I would ask that this reel of tape  
25                 be identified and the government would offer it.

rda32

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THE COURT: Government's Exhibit 9 is marked for identification.

(Government's Exhibit 9 was marked for identification.)

MR. FEFFER: On Exhibit 9 is marked the five conversations and the dates and times of each of the five.

BY MR. FEFFER:

Q Now, based on the identification of Dellacava on these telephone conversations and others, was application made on January 6, 1972 to renew and extend the wire tap at Diane's Bar to include conversations of Stephen Dellacava or with co-conspirators, accomplices and agents?

A Yes, it was.

Q And after that date did you continue to monitor conversations through February 4, 1972?

A Yes.

Q And did you continue to experience the same problems that you described for the court in monitoring these conversations in terms of the length of the conversations and this type of thing?

A Yes, yes.

Q Now, can you give the court an example of another word which you considered to be a code word for

1           either a meet or a narcotics transaction?

2           A       Well, I think in at least two conversations  
3           they used the chess game.

4           Q       Can you tell the court in more detail what you  
5           are referring to?

6           A       The conversations between Stephen Dellacava  
7           and Jack Brown.     I don't know who initiated it.     I  
8           think Jack Brown did.     He said, "Are you going to come  
9           over and play a little chess?"

10           He said, "Bring the big fellow with you, you  
11           know, a Hoagy sandwich."     Brown told Dellacava that,  
12           "I have hors d'oeuvres."

13           I think on another occasion they went through  
14           this chess game.     I think in fact around the early part  
15           of February there was another conversation about a chess  
16           game.

17           Q       Can you tell the court about that conversation  
18           and what took place after you overheard it?

19           A       Well, it was a series of conversations.     I  
20           think the initial conversations were between Stephen Della-  
21           cava and Jack Brown about a chess game that was going to  
22           take place.     I think this chess game involved bringing  
23           a little fellow.     I don't recall the date of the conver-  
24           sation but it was in the early part of February.  
25



On February 3rd Mr. Dellacava had a conversation with Leo Guarino, and they discussed whether he was going to see that guy, or something of that nature. And then Dellacava called a woman, who I believe is related to Jack Brown. It might have been his wife. And she told him that he'd be there later, he'd beat the other place later.

Then there was a subsequent conversation with Guarino and Dellacava arranging for Guarino and Dellacava to meet on Fifth Avenue after he saw the other guy, who was Jack Brown.

Well, on the 3rd of February, 1972 we initiated surveillance on Stephen Dellacava when he left the bar, and he drove -- it was pouring rain and he drove -- he was reckless. I mean I followed him but it wasn't any fun. He went over to Fort Lee, New Jersey. When he got over to Jersey he stopped underneath the George Washington Bridge and we terminated surveillance. We went over to a house on Central Avenue in an attempt to pick him up. It was fruitless. We had already staked out officers at John Brown's apartment on West End Avenue. We had officers staked out where they were supposed to meet on Fifth Avenue.

I think Dellacava arrived at 130 West End Avenue

1 rda35 Eaton-direct

2 about 10 p.m. to play this chess game. I arrived a  
3 few minutes after that, two minutes after that. But,  
4 as I say, there had been other officers there. One had  
5 been up on the 20th floor stairwell and one was in front  
6 of the building.

7 The officer in front of the building,  
8 Detective Cortazzo, saw Mr. Dellacava arrive, enter the  
9 building. The detective on the 20th floor, Mallard,  
10 saw Dellacava enter Jack Brown's apartment.

11 Q How long did this chess game, as you referred to,  
12 last?

13 A It was a couple of minutes.

14 Q What happened next?

15 A Mr. Dellacava left Mr. Brown's apartment carry-  
16 ing a black toiletry case. He went downstairs and he  
17 put the toiletry case in the trunk of his car. Detective  
18 Cortazzo observed him do things.

19 At this point I had already proceeded to Fifth  
20 Avenue and, I believe it was, 50th Street. I parked  
21 a block and a half south of that. Mr. Dellacava,  
22 whether he knows he did or didn't, in my opinion he saw  
23 me in New Jersey when he stopped under the bridge because  
24 I stopped on the next block. So I was tending to avoid  
25 him after that.

John Cortazzo, Detective Cortazzo, followed Dellacava to the meeting at 50th and Fifth with Mr. Guarino.

Now, I am unsure as to what actually took place there. All I know is that all of a sudden everybody jumped out of the car and I ran up the block, block and a half, whatever it was, to the scene and Sergeant MacDonald was holding the black toiletry case.

Examination of that bag revealed that it contained \$11,500.

Q Was there other money found on that evening as well?

A Yes. Mr. Gaurino had, I think, \$1100 in his pocket. Mr. Dellacava had about three or four, I'm not sure. Mr. Brown had a couple of thousand, I think.

Q Was Jack Brown's apartment searched that evening?

A Yes, it was.

Q Can you tell the court approximately how much money was found in the apartment, if you can recall?

A \$2074 or \$3074. I'm not really sure.

Q Was certain paraphernalia --

A For packaging narcotics was found in the apartment. He had a loaded gun on his person when he started to leave the apartment and he had three more guns inside

the apartment.

MR. SIOTNICK: Objection. I move to strike. I don't think that has anything to do with this hearing.

THE COURT: What does it have to do with this hearing?

MR. FEFFER: The government does not intend to offer the guns. We would have no objection to striking the testimony as to the guns.

THE COURT: All right, stricken.

BY MR. FEFFER:

Q You testified that Brown was at this meeting at 50th Street or was it just Dellacava and Guarino?

A Dellacava and Gaurino had arranged to meet at 50th Street, in their words, after Dellacava saw the other guy.

MR. FEFFER: Your Honor, the conversations that have been testified to, I believe there are four of them we played, but prior to that one there is one on January 10, 1972, at 7:25 p.m. That is the first conversation. I believe most of these are in the transcripts that have been furnished the court.

(Tape played.)

Q Can you identify the parties to that conversation?

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1           A       Yes.       That was John Brown and Stephen Dellacava.  
2  
3

4           Q       Who said at the end of the conversation, "I'll  
5 bring my friend, we'll play chess"?

6           A       Could you play that back?

7           MR. FEFFER:     Just the very last portion.

8                     (Tape played.)

9           A       Stephen Dellacava.

10          Q       Was anybody with Mr. Dellacava when he went  
11 to Jack Brown's that night, going into the apartment?

12          A       When you are talking about --

13          Q       I'm sorry.     Not that night.     Excuse me.  
14 Withdrawn.     My mistake.

15          MR. FEFFER:     Your Honor, the next conversation  
16 is on February 2, 1972, at 7:05 p.m.

17                     (Tape played.)

18          BY MR. FEFFER:

19          Q       Now I'll ask a question --

20          MR. MC ALEVY:     Your Honor, I'm sorry, I didn't  
21 get the date and time of that.

22          MR. FEFFER:     I gave the incorrect time.  
23 7:05 p.m., February 2, 1972.

24          Q       Did Mr. Dellacava go with anybody else, a  
25 "little friend," to the apartment of Jack Brown on the

1 rda39 Eaton-direct

2 3rd of February?

3 A No, he did not.

4 Q Based on your experience and also from listening  
5 to these conversations and others, what do you interpret  
6 the phrase "my little friend" to refer to?

7 A I thought he was going to deliver a half kilo-  
8 gram of narcotics to John Brown.

9 Q What kind of narcotics?

10 A Heroin or cocaine, I wasn't sure which one.

11 I take that back. I felt it was a half a  
12 ki of heroin.

13 MR. PEPPER: The next conversation, your  
14 Honor, is February 3, 1972, at 8:40 p.m.

15 (Tape played.)

16 BY MR. PEPPER:

17 Q Can you identify the parties in that conversa-  
18 tion?

19 A Leo Guarino and Stephen Dellacava.

20 Q Who was the individual who was supplying the  
21 telephone number?

22 A Leo Guarino.

23 MR. PEPPER: The next conversation is Febru-  
24 ary 3, 1972, at 8:40 p.m., and there is no transcript of  
25 this call.

(Tape played.)

BY MR. FEEFER:

Q Can you identify the parties to that conversation?

A I'm not sure about the female. I think it is either Jack Brown's wife or her sister. I'm not sure.

Q How about the male?

A The male is Stephen Dellacava.

MR. FEEFER: The next conversation, your Honor, is February 3, '72, at 9:05 p.m.

(Tape played.)

Q Officer, can you identify the parties to that conversation?

A Stephen Dellacava and Leo Guarino.

Q Which party is having dinner at the Rainbow Grill?

A Leo Guarino.

Q Was the meet that you testified to on February 3rd between Guarino and Dellacava -- did that take place on Fifth Avenue, near Rockefeller Center, the statue.

A Yes, it did.

Q Now, were there other code words used, as far as you determined, for narcotic transactions?

1           A       The early part of this eavesdropping order  
2  
3       there were several conversations pertaining to people being  
4       sick.       They were very brief and they didn't make sense.  
5       Like they knew they were going to get better Monday.

6                   One call was a male who I believed to be Mr.  
7       Vino Green.     He called up Mr. Dellacava and he said,  
8       "How you feeling?"

9                   And he said, "Sick, sick, sick, sick," and so  
10       forth.       "Keep in touch," and so forth.

11           Q       What did these conversations mean to you as the  
12       monitoring officer?

13           A       I felt that Vino Green was looking for a quan-  
14       tity of narcotics and Mr. Dellacava couldn't deliver.

15                   MR. FEFFER:     Your Honor, I'll have the last  
16       tape marked.

17                   (Government's Exhibit 10 was marked for iden-  
18       tification.)

19                   MR. SLOTNICK:    That's Government's Exhibit  
20       9, your Honor?

21                   THE COURT:     This is 10.

22                   Did you offer 9?

23                   MR. FEFFER:     Yes, your Honor.

24                   THE COURT:     Was it objected to?

25                   MR. SLOTNICK:    Not for the purposes of this



hearing only.

THE COURT: All right.

(Government's Exhibits 9 and 10 were received in evidence.)

MR. PEPPER: Your Honor, the first conversation on this reel, which has been marked Government's Exhibit 11, is on December 11, 1971, at 7:16 p.m.

(Tape played.)

BY MR. PEPPER:

Q Can you identify the parties to this conversation?

A One is Stephen Dellacava and I believe the other one is Vino Green.

Q And who says, "I'm sorry. I can't help you"?

A Stephen Dellacava.

MR. PEPPER: The next conversation is December 13, 1971, at 8:20. That one is on page 9 of the transcript.

(Tape played.)

Q Can you identify the parties to that conversation?

A Stephen Dellacava, and that male I believe is Vino Green.

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MR. PEPPER: Next one is December 27, 1971,  
at 6:15.

THE COURT: Is that on --

MR. SLOTHICK: Page 23, your Honor.

MR. PEPPER: That is correct.

(Tape played.)

Q Can you identify the parties to that conversation?

A Stephen Dellacava and the male I believe is  
Vino Green.

Q Who said, "The moving van people don't have  
no point in time"?

A Mr. Dellacava.

Q What did that mean to you at the time of  
interception?

A I think it might have been there was a possibility  
that he could get something but it was too late now to  
get it, he would have to rearrange it or arrange it.

Q Approximately how long has Mr. Dellacava been  
under surveillance by members of your group and the Federal  
Bureau of Narcotics and Dangerous Drugs?

A How long?

Q Yes, since when?

A December 23, 1971.

1           Q       And during that time was Mr. Dellacava ever  
2  
3       seen to be engaged in the moving van business?

4           MR. FEITELL:       I will object to this unless  
5       we have the officer's own testimony, his own knoweldge.

6           MR. PEEFER:       That's what I'm asking.

7           MR. FEITELL:       You didn't put it that way.       I  
8       object to the form of the question.

9           THE COURT:       Well, I don't think it is ob-  
10       jectionable if he asks him for hearsay.       It would  
11       seem to me that would help you rather than hurt you.       He  
12       is asking him whether, so far as he knows, he has ever  
13       been seen by anyone to be in the moving van business.

14           I will allow that so far as he knows.

15           A       So far as I know, no.

16           MR. PEEFER:       The last call on this reel is  
17       January 7, 1972, at 6 o'clock p.m.       I don't believe that  
18       one was transcribed.

19           (Tape played.)

20       BY MR. PEEFER:

21           Q       Can you identify the parties to that conver-  
22       sation?

23           A       Stephen Dellacava and a male I believe to be  
24       Vino Green.

25           Q       Who said, "It growed"?

1           A       Vino Green.

2  
3           Q       Do you have any opinion based on your experi-  
4           ence as to what that means, that phrase, "It grewed"?

5           A       I'm not sure but it indicated that perhaps  
6           Green finally got a package and he's making money on it.

7           Q       In point of time was this the final conversa-  
8           tion or the last in a series of conversations relating  
9           to people being sick between Green and Dellacava?

10          A       Yes.

11                   (Government's Exhibit 11 marked for identifi-  
12           cation.)

13          MR. PEPPER:     The government offers 11.

14          MR. SLOTNICK:   No objection for purposes  
15           of the hearing, your Honor.

16                   (Government's Exhibit 11 was received in evi-  
17           dence.)

18          MR. FEITELL:    There is a representation  
19           that the recordings played comprise the total of what is  
20           on those tapes, and no other conversations?

21          MR. PEPPER:    That is correct.

22          THE COURT:      I didn't understand that.     There  
23           were no other conversations on Exhibit 11?

24          MR. FEITELL:    Except those we have heard.

25          MR. PEPPER:    That is correct.     We made up

1 four master reels. Three have already been referred  
2 to as 9, 10 and 11. The last one is Government's Exhibit  
3 12, which contains six other conversations. And these  
4 conversations on these four reels represent those  
5 conversations which the government intends to offer at  
6 trial.  
7

8 THE COURT: And although there is a lot of  
9 tape on those reels, the only conversations on them are  
10 the ones you are enumerating?

11 MR. FEFFER: That is correct.

12 THE COURT: All right.

13 (Government's Exhibit 12 was marked for iden-  
14 tification.)

15 MR. FEFFER: Your Honor, I would just like  
16 to play these conversations. I think most of these are  
17 transcribed. The first one is January 14, 1972.

18 Actually, your Honor, to save time, I think  
19 I can probably avoid actually playing them at this hearing  
20 and just furnish the transcripts on Monday or Tuesday for  
21 your Honor and for defense counsel and that will save time.

22 THE COURT: Is that agreeable?

23 MR. SLOZNICK: Your Honor, we would like to  
24 hear them. I think it would save us some time in the  
25 course of our hearing.

1           MR. PEPPER:     I can tell defense counsel which  
2           conversations they are in point of time.

3           THE COURT:     It will only take a couple of  
4           minutes, right?

5           MR. PEPPER:     That is correct, 10 or 15 minutes.

6           THE COURT:     Well, I don't see any important  
7           reason why I need to hear them at this time for this  
8           hearing, if I have the transcripts.     Do you think I  
9           need to hear them, gentlemen?

10          MR. SLOTHICK:    As I have indicated to your  
11          Honor at one time during the course of this hearing, there  
12          will become a question of voice identification.     I  
13          think your Honor should be aware of the voice of Dellacava  
14          as we are all at this time, and this may aid the court.

15          THE COURT:     All right.

16          MR. PEPPER:     First one is January 14, 1972,  
17          at 6:48.     I will check to see if there is a transcript.

18          MR. SLOTHICK:    It appears there is.

19          (Tape played.)

20          BY MR. PEPPER:

21                 Q     Can you identify the parties to that conver-  
22                 sation?  
23

24                 A     Yes, Stephen Dellacava and John Capra.

25                 Q     And who asked, "Who you got the appointment with,

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2 the right guy"? Do you recall who said that?

3 A. I believe it was John Capra.

4 MR. FEPPER: The next conversation is January  
5 18, 1972, at 6:12.

6 (Tape played.)

7 BY MR. FEPPER:

8 Q Can you identify the parties to that conversa-  
9 tion?

10 A Stephen Dellacava and John Capra.

11 Q Who says, "Bring the money with you and we'll  
12 split it"?

13 A John Capra.

14 MR. FEPPER: The next one is January 22,  
15 1972, at 6:56.

16 (Tape played.)

17 Q Can you identify the parties to that conver-  
18 sation?

19 A John Capra and Stephen Dellacava.

20 Q And who says, "I'll come up about 11 if nothing  
21 happens, all right"?

22 A I missed it.

23 Q Who says, "All right, I want to go see him with  
24 you"?

25 A John Capra.

MR. FEFFER: The next one is January 21, 1972,  
at 4:45 p.m.

(Tape played.)

BY MR. FEFFER:

Q Can you identify the parties to that conversation?

A Stephen Dellacava and John Capra.

Q Who said, "Yeah, I spoke to him, hollered at him. He says he's got it, he's just waiting on something, I don't know"?

A Stephen Dellacava.

MR. FEFFER: The next one is January 27, 1972, at 6:43 p.m.

(Tape played.)

BY MR. FEFFER:

Q Can you identify the parties to that conversation?

A Stephen Dellacava and John Capra.

Q Who says, "These people are on our backs. After all, it ain't a dime. A car cost a lot of money you know"?

A Mr. Dellacava.

Q In your opinion, what does the phrase "a car cost a lot of money" refer to?



1           A       I think he's referring to a kilogram of nar-  
2                   cotics.  
3

4           MR. PEPPER:     I have no further questions,  
5                   your Honor.

6           THE COURT:     Let's take a 10-minute recess.  
7                   (Recess.)

8           MR. PEPPER:     The government asks the last  
9                   tape be marked Government's Exhibit 12 for identification  
10                   and we offer it at this time.

11          MR. SLOTNICK:    No objection for the purposes  
12                   of this hearing, your Honor.

13                   (Government's Exhibit 12 was received in evi-  
14                   dence.)

15          MR. PEPPER:     No further questions, your  
16                   Honor.

17          CROSS EXAMINATION

18          BY MR. SLOTNICK:

19           Q       During the year 1971 you were involved with  
20                   several taps on telephones, is that correct?

21           A       That's correct.

22           Q       Do you remember which telephones they were?

23           MR. PEPPER:     Objection, your Honor.

24           THE COURT:     Are you trying to elicit any  
25                   other telephones that relate to this case or some other

case?

MR. SLOTHICK: That relate to this case, your Honor.

THE COURT: Is there an objection if the detective is asked what other taps he was involved in that bear on the case before us, Mr. Peffer, if any?

MR. PEPPER: If it is limited to that, your Honor, that's acceptable.

THE COURT: Limit your answer to that, any taps that involved this case, this group of defendants. That would be Diane's Bar and the residence on Theriot Avenue.

Q No other taps relating to this case or any of the individuals involved in this case prior to the Diane's Bar tap, is that correct?

A No -- that is correct, yes.

Q There was a Cucciniello wire tap?

MR. PEPPER: Objection, your Honor. The answer has been there is no other tap relevant to these proceedings.

THE COURT: What is this on the alleged tap?

MR. SLOTHICK: I want to know if he was involved with the Cucciniello wire taps.

THE COURT: Why is it relevant? I know what

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2 you want to know.

3 MR. SLOTHICK: I'll bring it up at a  
4 later time, your Honor. Perhaps I can get to it to show  
5 the relevance.

6 THE COURT: All right.

7 BY MR. SLOTHICK:

8 Q Prior to the Diane's Bar and the Theriot Avenue  
9 wire taps, how many wire taps were you involved in?

10 A Three.

11 Q Three. And were they all New York County  
12 wire taps?

13 A No.

14 Q Were they Queens County wire taps?

15 A One was, yes.

16 Q One was Queens County. How many were New  
17 York County?

18 A One.

19 Q And what was the last one, what county?

20 MR. FEPPER: Objection, your Honor. What  
21 is the relevance?

22 MR. SLOTHICK: His expertise, your Honor.

23 MR. FEPPER: As to where the taps were lo-  
24 cated?

25 THE COURT: I will allow him to say what

1 SPAST

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2 county.

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3 BY MR. SLOTHICK:

4 Q What other county was it?

5 A Nassau County.

6 Q Nassau County.

7 These were prior to the Diane's Bar wire taps,  
8 is that correct?

9 A That is correct.

10 Q Any one of those wire taps on a public pay  
11 phone?

12 A Yes.

13 Q Which county?

14 A New York County.

15 Q New York County. And prior to your being  
16 involved in those wire taps did you receive instructions  
17 from the district attorney?

18 A On at least the New York County one, yes.

19 Q What about the one in Nassau County?

20 A I didn't receive any instructions directly,  
21 no.

22 Q From anybody?

23 A Not that I can recall.

24 Q Well, isn't it a matter of fact that the Nassau  
25 County wire tap was a nonmonitored wire tap, it ran

1 constantly for 24 hours a day?

2  
3 MR. PEPER: Objection.

4 THE COURT: Sustained.

5 Q In Queens County did you receive any instruc-  
6 tions from anybody with regard to wire tapping?

7 A No, I didn't.

8 Q That was not a public telephone?

9 A No, it was not.

10 Q And basically you did the same as you did in  
11 Diane's Bar and the Therior Avenue wire taps, you were  
12 a monitoring agent, is that correct?

13 A I did very little monitoring in that particu-  
14 lar case.

15 Q But you were involved with the wire taps, you  
16 overheard the wire taps and you did some monitoring?

17 A That is correct.

18 Q And the other telephone in New York County that  
19 was prior to the Diane's Bar and the Theriot Avenue wire  
20 taps, did you receive instructions in that case?

21 A Yes.

22 Q Who did you receive your instructions from?  
23 I told you it was Richard Friedman, district attorney,  
24 would that refresh your recollection?

25 A Yes.

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Eaton-cross

Q Didn't he tell you to be very careful to listen only to the named parties in view of the fact that this wire tap was a public telephone?

A Yes, he did.

Q And did he tell you that if you had any doubts with regard to the named party being heard you were to shut it off?

A That is correct.

Q Did you tell him how you were able to arrive at the voice of the named party?

A Yes, I did.

Q Would you tell us how?

A That would involve conversations I had heard on a prior wire tap and a conversation I overheard that was made to him by a confidential informant.

Q So you actually had the named subject on a tape at that time, is that correct?

A In that particular investigation, yes.

Q As a matter of fact, you even played that tape for the district attorney involved, is that correct?

A I don't believe I did.

Q But you represented to him that you had it on tape and you knew the voice, is that correct?

MR. FEEFER: Objection, your Honor.

1 rda56  
2 THE COURT: What is the relevance of that?

3 MR. SLOTNICK: Well, practice, your Honor.

4 We are getting to a voice identification proposition and  
5 I'm attempting to show --

6 THE COURT: I don't think one case makes a  
7 practice. I don't want to go into all the other  
8 different circumstances of the other occasion and into  
9 why it was different and why this was available in one  
10 case and not in another.

11 Sustained.

12 BY MR. SLOTNICK:

13 Q From that wire tap you eventually ended up at  
14 the Diana's Bar and Theriot Avenue wire tap. Is that  
15 correct?

16 MR. FEEFER: Objection.

17 THE COURT: Sustained.

18 If you want to ask him a question about whether  
19 this tap was the result of the other tap, you might ask  
20 that. But I don't understand what your question meant,  
21 as you put it.

22 Q Isn't it a matter of fact, that this tap had  
23 something to do with the other wire tap in New York County?

24 A No, it didn't.

25 Q Not even remotely?

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Eaton-cross

1           A       As it turned out, the conversation that was  
2  
3 intercepted indicated there was a connection between the  
4 two but that was after the fact.

5           Q       Well, that's what I originally asked you,  
6 wasn't --

7           THE COURT:   Don't tell him that.   I heard  
8 what you asked him.

9           Next question.

10          Q       Was it connected at all in any way with the  
11 wire tap on Diane's Bar?

12          A       No, it was not.

13          Q       Didn't you say you subsequently learned that  
14 it was?

15          A       Well, you are asking me did --

16          Q       Did you say you subsequently learned it was?  
17 Yes or no.

18          A       Yes.

19          Q       Now, in November of 1971 --

20          MR. SLOTNICK:   Withdrawn.

21          Q       By the way, that was the so-called Cucciniello  
22 wire tap, am I correct?

23          A       Which one are you referring to?

24          Q       The one you eventually found out was connected  
25 with this case.



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A Not the wire tap, the people are connected.

Q They were heard on the Cucciniello wire tap?

A Yes.

Q You monitored the Cucciniello wire tap?

A Yes, I did.

Q You played an active role in the Cucciniello wire tap?

A That is correct.

Q : During November of 1971 you met with Detective McCrory, Finelli and an assistant district attorney by the name of Fishman, is that correct?

Q You told him certain things. Would you repeat to us what you told Assistant District Attorney Fishman, as you said it to him and he said it to you?

A The exact words I couldn't tell you. I can tell you in essence.

Q Can you recall in essence the words that were used, the conversation that was had?

A Well, we went to him as a result of a couple of telephone calls that were made to Joseph Della Valle. We went to him with the conversations themselves and Detective McCrory was there because he had been working on Joseph Della Valle independent of us. So the lieutenant put us together. We went to Cliff Fishman to

1 see if we had probable cause to get a wire tap.

2 Q Did you indicate to District Attorney Fishman  
3 that you had any knowledge of the bar at 2034 Second  
4 Avenue, other than the observation you have testified  
5 to?  
6

7 MR. FEEFER: Objection, your Honor, as  
8 to the relevancy on the monitoring that followed. It  
9 may go to probable cause.

10 THE COURT: I will allow it.

11 A Did I indicate to him --

12 Q That you knew anything else about the bar  
13 other than what you had observed?

14 A No, I didn't.

15 Q And you had a second meeting with the District  
16 Attorney's office on the 28th of November, is that cor-  
17 rect?

18 A It's possible.

19 Q Well, didn't you testify on direct you had a  
20 second meeting on November 28th?

21 A 23rd, I think it was.

22 Q Now, Detective Eaton, have you brought any of  
23 your notes with you today?

24 A No, I haven't.

25 Q Personal memorandum book, anything else of that

sort?

A No.

Q You haven't brought anything that you can use to refresh your recollection or to aid defense counsel?

A No, I haven't.

Q Have you ever testified in a court proceeding before?

A Yes, I have.

Q Are you aware that --

MR. SLOTNICK: Withdrawn.

Q At those other court proceedings did you ever bring your memoranda or your notes with you?

A I very seldom make notes. I usually will make official documentation of whatever I do.

Q Isn't there a police regulation in New York City that requires a detective to carry a notebook with him in which he makes notes of the events that he feels are pertinent to his investigations?

A No --

MR. FEEFFER: Objection, your Honor.

THE COURT: I don't think it is going to help me, Mr. Slotnick. You and I had known for a long time that we would see the witness here. If there were any materials that you wished him to bring with him for

your assistance, you had plenty of opportunity to demand. You can ask him what he has, if anything, that you didn't ask for before this Sunday morning, and whatever he's got you likely to be able to get. Whatever he hasn't got, you can't get, and let's proceed.

Q What do you have with you?

A Nothing at all with me.

Q Are there other materials pertaining to this case that are elsewhere?

A Not that I know of, no. It's on official -- either in the case folder or in the logs or in the affidavits.

Q Where is your personal memorandum book for 1971?

A We don't use memorandum books.

Q Do you use anything to make notes?

A Activity -- legal paper, if I have to make notes, yes.

Q Where are those notes?

A The only notes I had pertaining to this case are probably at my residence.

Q So, in other words, other than logs, transcripts, the affidavits we have and the official typed notes, you have no other personal notations with regard to this case,

1 rda62 Eaton-cross

2 other than perhaps a few scant papers at home.

3 A That is correct.

4 Q Now, District Attorney Kaufman informed you  
5 to be extremely careful because it was a telephone that  
6 was used by the public, is that correct?

7 A That is correct.

8 Q And he indicated you were only to intercept  
9 Joseph Della Valle, is that correct?

10 A That is correct.

11 Q What were the methods on that you were about  
12 to use to intercept Joseph Della Valle?

13 A You are referring to Diane's specifically,  
14 right?

15 Q No. I'm referring to both at this point.

16 A Well, at his home it would be relatively  
17 simple. He should be the only one there, or his mother,  
18 or his brother. So there won't be that much of a  
19 problem there.

20 Q In fact, you knew at his home that his bro-  
21 ther was in jail at this time? As a matter of fact,  
22 don't you remember --

23 A At the time of the signing of the affidavit,  
24 that is correct, yes.

25 Q So during the month of December, 1971 the

brother, who was the only other male living in the house,  
was in jail?

A That is correct.

Q So there was only one male living at the time  
Della Valle residence at that time, is that correct?

A As far as we know, yes.

MR. PEPPER: May I say at this time if there  
are any prospective witnesses to this proceeding sitting  
in the courtroom for the defendants I would ask that they  
be excused.

THE COURT: I assume we were operating on  
that basis.

MR. SLOTNICK: So do I, your Honor.

MR. PEPPER: There are no witnesses in the  
courtroom?

MR. SLOTNICK: Other than the defendants,  
no.

MR. PEPPER: All right.

It might make things clear. I am talking about  
the minimization aspect and the subsequent hearing that  
I take it we are going to have on probable cause, which  
has been referred to by defense counsel, anything to do  
with this particular wire tap.

MR. SLOTNICK: Anything to do with these



1 was called. Detective Finelli and myself watched a  
2 confidential informer dial the number. Detective Finelli  
3 and myself watched the informer dial the telephone  
4 number of the bar at 2034 Second Avenue, and the confiden-  
5 tial informer asked for Buster.  
6

7 Q Now, at this time where was the confidential  
8 informer?

9 A In a phone booth.

10 Q Where was the phone booth?

11 A On a street corner.

12 Q Where were you?

13 A In the phone booth.

14 Q Where was Detective Finelli?

15 A Outside the booth.

16 Q So it was you and the confidential informer  
17 in the phone booth?

18 A Yes.

19 Q Did you have any recording apparatus with you  
20 at the time?

21 A No.

22 Q At the time this phone call was made did you  
23 know an hour or two hours prior to that that this phone  
24 call was going to be made?

25 A I was not sure whether the informer would be



1 willing to cooperate any more. I wasn't sure.

2 Q Well, did there come a time when you --

3 MR. SLOTNICK: Withdrawn.

4 Q What time was this phone call made?

5 A I'm not sure. Around 8 p.m.

6 Q Around 8 p.m. What time did you contact the  
7 informer that evening?

8 A I think I had spoke with him several days be-  
9 fore and said I wanted to see him.

10 Q When you say you wanted to see him, in your  
11 own mind you were interested in further material, investi-  
12 gation, and information, is that correct?

13 A That is correct.

14 Q As a matter of fact, you had hoped perhaps  
15 he would make a phone call on somebody and another tap  
16 could be opened up?

17 A That's also correct.

18 Q And you had informed Detective Finelli of the  
19 same thing, is that correct?

20 A I missed the point.

21 MR. SLOTNICK: I withdraw the question.  
22 It's not important.

23 Q Where did you meet the informer?

24 A On 50th Street, Lexington Avenue.

Q On the street corner, outside, in a bar?

A The location I think I would have to keep for myself for his safety and protection.

MR. PEEFER: I see no relevancy as to where he met the informant on that day, your Honor.

THE COURT: Neither do I. If Mr. Slotnick wants to press it, he may press and I will rule.

MR. SLOTNICK: I think it is rather important we have the entire genesis of this transaction of this evening. I can give an offer of proof at the side bar, although I think your Honor knows what I am getting at.

THE COURT: You may come to the side bar.

(At the side bar.)

MR. SLOTNICK: I wish to indicate to the court that the reason I am pursuing this line of questioning is to indicate to the court that the detective should have come prepared, that there were other options than this type of phone booth operation in which to overhear a prospective target. I think they should have been better equipped. Had he met an informer in an apartment I think that might have been a better place to make a phone call rather than from a phone booth.

THE COURT: He's told you he made it from

a phone booth. So you have established your point.

Now, you don't have to know where he met him.

MR. SLOTNICK: I am attempting to pursue my point that this was an act of negligence on his part at the minimum, that he should have acted in a better, more policelike manner in capturing a voice and listening to a voice and being prepared for the fact he was to hear a voice.

THE COURT: I don't see any reason why you have to know where they met. Obviously in New York City. There are plenty of apartments in New York City.

I am not going to, for this kind of somewhat debatable purpose, override the claim that there are problems of personal safety involved here. You have to get it in some other way.

MR. SLOTNICK: May I ask him, your Honor, and I think Mr. Feffer would know the reason for the claim of personal safety, although one of the things that overrides that claim is the fact that I in my papers have revealed the name of the confidential informer.

THE COURT: You have revealed the name of what you say is the confidential informer.

MR. SLOTNICK: That is correct.

THE COURT: If the government is prepared to

1 acknowledge that, that may be the end of the discus-  
2 son  
3

4 Are you?

5 MR. PEEFFER: Let me say first of all in answer  
6 to your question, no. But I think that I am unable to  
7 understand in my mind, even assuming that this detective  
8 failed to bring recording equipment or did not use an  
9 apartment, I don't understand what the relevancy of that  
10 is to what happened in December and November -- excuse  
11 me -- December and January when he was monitoring the  
12 interceptions.

13 THE COURT: I am not going to rule on it now  
14 but I gather your evidence is they should have had a  
15 clearer voice identification before they set up the tap  
16 so they wouldn't have been uncertain whether the voice  
17 was of Dellacava or Della Valle. To put it more ac-  
18 curately in terms of your contention, they wouldn't have  
19 thought the voice turned out to be Dellacava's when it  
20 was probably Della Valle's. Is that it?

21 MR. SLOTNICK: Yes.

22 THE COURT: I'll let you develop that within  
23 reasonable limits and I'm not going to let you get at the  
24 particular geographical locations here for that purpose.  
25 You are going to have to go at it in some other way.

rda70

Eaton-cross

1 You should ask him is there any reason you didn't go to  
2 a soundproof studio or an apartment and maybe he will tell  
3 you.  
4

5 MR. SLOTHICK: May I ask your Honor one  
6 other thing. I want to keep within the bounds of  
7 your Honor's instruction. May I ask him did he meet  
8 the informant in an apartment house, in a bar, in a coffee-  
9 shop without getting to the address or anything of that  
10 sort?

11 THE COURT: Is there an objection?

12 MR. PEPPER: I don't see the relevancy of  
13 where he met him on that particular day.

14 THE COURT: The kind of place didn't seem  
15 to me to entrench on any questions of safety.

16 MR. PEPPER: I am talking about the rele-  
17 vancy of where he met on that particular date. It  
18 doesn't seem to be relevant to what he wants to get at.

19 THE COURT: I will allow him to ask that.

20 MR. SLOTHICK: May I ask one other representa-  
21 tion on the record at this time, and maybe for another  
22 time? Does Mr. Pepper know, without asking him, be-  
23 cause I am sure he wouldn't answer, the name of the  
24 reliable confidential informer that the detective met  
25 that day as alleged?

1                   MR. PEPPER:     Let me state that, your Honor.  
2  
3     The answer to that question is yes, I do know.

4                   Secondly, since Mr. Slotnick has said while  
5     in court and in his affidavit that he knows the name of  
6     the confidential informant, that he is positive of the  
7     name of the confidential informant, the government will  
8     take the position that at a subsequent hearing it is not  
9     our obligation to produce him because they are fully  
10    aware of who he is.

11                  THE COURT:     Do you know his whereabouts?

12                  MR. SLOTHICK:   I am not talking about pro-  
13    duction.

14                  THE COURT:     Do you know his whereabouts?

15                  MR. SLOTHICK:   I am trying to find him and  
16    I can't.

17                  THE COURT:     The answer is you dn't?

18                  MR. SLOTHICK:   That is correct, your Honor.

19                  THE COURT:     Well, if his production is demanded  
20    and the government knows his whereabouts, I may have a  
21    different view about whether you must tell.     Do you  
22    ~~know~~ the whereabouts of the man that Mr. Slotnick claims  
23    is the informant?

24                  MR. PEPPER:     We do not.

25                  THE COURT:     Do the New York Police know, as

far as you know?

MR. SLOTNICK: Bode.

MR. FEFFER: I have no idea. I would have to check that.

THE COURT: If Mr. Slotnick wants to know where he may be found, do you want to subpoena him if he is findable?

MR. SLOTNICK: Absolutely, your Honor.

THE COURT: You had better check and let Mr. Slotnick know about his whereabouts for the purpose of being subpoenaed.

MR. FEFFER: Fine.

MR. SLOTNICK: For the court's information, we have been attempting to locate him. I have a private investigator who is attempting to locate this man.

THE COURT: For this case?

MR. SLOTNICK: That is correct.

THE COURT: If the government knows, I assume they will tell you. If there are any concerns for anybody's safety, it is now on the record that pressure to reveal his whereabouts is the result of the court's actions and one would hope that it would all work out very well.

MR. FEFFER: This is the whereabouts of the individual --

THE COURT: Mr. Slotnick says.

MR. SLOTNICK: Your Honor, for the record Mr. Bode can only help the defendants, not hurt them. I am calling him as my witness.

THE COURT: All right.

(In open court.)

BY MR. SLOTNICK:

Q Did you meet this informer in a coffee shop?

A Not in a coffee shop, no.

Q In a bar?

A No.

Q In an apartment building?

A At his place of business.

Q His place of business. Were there any phones in his place of business?

A Yes, there were.

Q Were there other people at his place of business?

A Yes, there were.

Q Were there other people at his place of business?

A Yes, there were.



Q Were there other people at his place of business?

A Yes, there were.

Q Did you have a lengthy conversation with him at his place of business?

A No.

Q You met him and then you left, is that correct?

A That is correct.

Q Did you then go out to eat?

A No, we did not.

Q You had a conversation with him?

A Yes.

Q Would you relate the conversation to us without mentioning his name?

A I asked him if he could assist us in an investigation, further assist us in an investigation. I asked him if he could call the parties that he had described to me in September, not with the thought of actually going through with any purchase but see if he could develop one on the telephone.

Q Did he say that he would?

A Yes, he did.

Q When he made this commitment to you, where were

you?

A In the vicinity of 50th Street and Lexington Avenue.

Q Was there any reason that you didn't go to a more available place at that time to listen to this conversation, a place where you could have a better hearing of the other side of the conversation?

A If I get into that area I am going to divulge his identity. It was impossible to go further than we have gone already.

Q In other words, you are at 50th Street and First Avenue, is that correct?

A Lexington.

Q Lexington Avenue. In order for you to make a phone call you couldn't go any place else but to that one telephone booth?

A That is correct, yes.

Q But from his place of business to 50th Street and Lexington Avenue did you pass other areas in which there were phone booths?

A No, I did not.

Q No enclosures whatsoever?

A No, sir.

Q Isn't the Waldorf-Astoria near 50th Street and

Lexington Avenue?

A Yes, it is.

Q If you would have gone to the Waldorf-Astoria would you have revealed his identity or endanger it?

A That's not the point I am bringing out.

Q Well me the point.

A He had to stay within a certain proximity to his place of business, the nature of which I can't discuss here. Going inside the Waldorf-Astoria would take him away from what he had to protect or take care of.

Q In other words, he was working at the time that you were speaking to him, is that correct?

A That is correct.

Q And do you know when he stopped working that evening?

MR. FREPPER: Objection, your Honor.

THE COURT: Sustained.

Q Well, couldn't you have met him at a later hour and brought him to another place to make the phone call?

A That's conceivable but it would have been very early in the morning.

Q And so we have the two of you -- this is October, am I correct, the end of October?

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rda77

Eatan-cross

97½

A Yes.

Q In a phone booth listening -- at least you are listening or attempting to listen to a voice on the other end of the phone?

A That is correct.

Q What do you hear on the other end of the phone other than the voice, any noise, static?

A I don't recall.

Q I'm sorry. I didn't hear that.

A I don't recall.

Q But you recollect the voice that you heard, is that correct?

A Yes, among the other sounds that were taking place on the street. I couldn't close the phone booth.

Q So you had your own sounds to contend with?

A That is correct, yes.

Q You subsequently heard the voice again, is that correct?

A That is correct.

Q You heard it again when a call was placed to Theriot Avenue, is that correct?

A That is correct.

Q From the same phone booth?

1 rda78 Eator cross

2 A There is two booths. I think it was the  
3 same phone booth, I'm not sure.

4 Q Could you close this phone booth?

5 A No, you couldn't close the phone booth on  
6 either of these occasions.

7 Q The second voice that you heard, do you recol-  
8 lect that as being the same as the first voice?

9 A It seemed to be the same voice, yes.

10 Q That's not the question I asked. Do you  
11 recollect it as being the same?

12 A To me it seemed to be the same voice.

13 Q Would you characterize the voice that you  
14 heard on the first phone conversation?

15 A It was a deep voice, male; maybe with an  
16 accent. That's as much as I could characterize it.

17 Q And you knew the name of the prospective  
18 target at this time, didn't you?

19 A Yes, I did.

20 Q Did you go to any police records to pull a  
21 file for Della Valle or aren't there any places where you  
22 can go and pull a file called Joseph Della Valle?

23 A I don't think he had a record at that time.

24 Q Well, isn't it a matter of fact that in  
25 your affidavit you attribute a B number to him or a B num-

ber that associates with him?

A Not to him. I don't think he had a record.

Q Well, what is your best recollection?

A Well, most of my information on Joseph Della Valle came from the informer or Detective McCrory.

Q You didn't go to a police cabinet and pull Della Valle or Dellacava instead of Della Valle by mistake, did you?

A No.

Q How old did you determine that the prospective target Della Valle was?

A From the information I received he was in his early 20s or mid-20s.

Q About 23 in your affidavit, is that correct?

A Yes.

Q Do you know whether he was married or unmarried?

A No, I don't.

Q You knew he lived at home with his mother?

A That I ascertained, yes.

Q You also knew he had a brother who lived at home but who was in jail?

A Right.

Q What else did you know about him?

rda80

Eaton-cross

1           A       Well, I know that he frequented -- are you  
2 asking me for my information which I received?

3           Q       Prior to your submission of the affidavit to  
4 the judge to sign.

5           A       I was informed that he frequented the bar and  
6 grill at 2034 Second Avenue, an apartment house on First  
7 Avenue and 100th Street, and a public area on Second Avenue  
8 in the teens, 15th, 16th street, and the delightful  
9 restaurant, along with some other people: Raymond Rescildo,  
10 R-e-s-c-i-l-d-o, Michael Meldish, several young men who  
11 were all suspected of being in narcotics from various  
12 sources, whether they were official or unofficial.

13           Q       You received this information from official  
14 and unofficial sources, is that correct?

15           A       I say whether official or unofficial.

16           Q       Where did you receive this information from?

17           A       The majority of it I received from Detective  
18 McCrory.

19           Q       Do you know where he got the information?

20           A       No, I don't.

21           Q       Did you ever receive any information of this  
22 with regard to official sources?

23           A       Department of corrections.

24           Q       What did the Department of Corrections tell you?  
25

1           A       Only to the fact that at least John Della Valle  
2  
3       lived at 1475 Theriot Avenue.

4           Q       You knew that Joseph lived there too; there  
5       is no question about that, is there?

6           A       I believed that.    I'm talking about official  
7       documentation.

8           Q       Well, didn't you submit an affidavit to the  
9       court saying that Joseph Della Valle lived at 1475 Theriot  
10      Avenue in the Bronx?

11          A       That's what I see, yes.

12          Q       So there is no question in your mind that he  
13      lived at that address?

14               THE COURT:       You had asked him where he got  
15      various kinds of information and he is trying to tell you.  
16      Go ahead and ask him some other stuff.

17               MR. SLOTNICK:    I don't think I got an answer  
18      to my last question:    there was no question that Joseph  
19      Della Valle lived at 1475 Theriot Avenue.

20          A       That is correct.

21               BY MR. SLOTNICK:

22          Q       Now, you indicated that you had observed Joseph  
23      Della Valle prior to your obtaining the wire tap.    Would  
24      you tell us what occasions and how you observed the tar-  
25      get?



1 rda82  
2 MR. PEPPER: Objection.

3 MR. SLOTNICK: On his direct examination that  
4 he observed Mr. Della Valle on several occasions. I  
5 want to know where he was.

6 MR. PEPPER: Again, your Honor, I this may  
7 be relevant in terms of any subsequent hearing on probable  
8 cause but I can't see any relevancy to monitoring a wire  
9 tap. This goes to the affidavit.

10 THE COURT: I will let him ask it.

11 A You are talking prior to or subsequent to the  
12 eavesdropping warrant?

13 Q I am talking prior to obtaining the wire tap  
14 order.

15 A On the night that the first telephone call  
16 was made, after the phone call was made we eventually  
17 ended up on 106th Street and Second Avenue.

18 Q When you say "we," who is "we"?

19 A Detective Finelli and myself.

20 Q Yes?

21 A I believe -- I don't recall the time but about  
22 a half hour after we left downtown and went uptown to the  
23 bar, we saw a male I believe to be Joseph Della Valle get  
24 into the white Toronado that was registered to his brother  
25 John. He left Diane's Bar. Right now I don't recall

the exact time.

Q Well, what caused you to believe that that was Joseph Della Valla?

A From his physical appearance.

Q What was the physical appearance? Was there anything very unusual about him?

A No, he looked like Joseph Della Valle. We were approximately a block north but he entered that white '68 Toronado that belonged to John Della Valle.

Q What was his physical description that you had at that time?

A I think it was five -- I wouldn't want to guess on that.

Q Excuse me?

A I'm not sure. I wouldn't want to guess.

Q You don't remember?

A No, I don't.

Q When was the last time you remember the affidavits you submitted for Diane's Bar wire tap in this case?

A A few days ago.

Q A few days ago?

A Yes.

Q Did you read the first affidavit you submitted?

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A Yes, I did.

Q Do you recollect that in that affidavit there is a description of Joseph Della Valle?

A I know there is one there, yes.

Q You don't remember what it is?

A Not offhand, no.

Q How many times did you see Joseph Della Valle prior to your obtaining the eavesdropping warrant?

A Four. I'm not sure. Four, five.

Q You don't remember his description?

A As it was given to me, no. I think he is about five/six. He is a stocky fellow, curly hair, he walks with a limp.

Q What's the description that you received when?

A Well, from the informer, from Detective McCrory, and from looking at him. I think that's about his general height and weight and everything.

Q When you saw an individual about five/six, with curly hair, stocky, walking with a limp, you said that's Joseph Della Valle, you made an identification?

A Yes.

Q Was that ever corroborated to you, prior to your obtaining the warrant, by anybody else? How about Detective McCrory?

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Eaton-cross

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A Did he ever point him out -- wait a minute.

Q If you remember.

A No, I don't.

Q Do you remember whether anybody corroborated that identification as being that of Joseph Della Valle?

A Nobody could. There was only Finelli and myself.

Q As a matter of fact, prior to your obtaining an electronic eavesdropping wire not only had you an almost inaudible perception of his voice but you didn't even know what he looked like?

A I say I know what he looked like. He appeared to be Joseph Della Valle.

Q If you saw six people at that time in a line-up, all five/six, curly hair, walking with limps, could you pick out Joseph Della Valle?

A I could.

Q Therefore, you did have a description, you did know what he looked like?

A I don't recall what I put in the affidavit.

Q I know you don't recall what you put in your affidavit. I'm not interested what you put in your affidavit; I'm interested in knowing the truth now. At that time could you point out and recognize Joseph Della

valle?

A I'm pretty sure I could, yes.

Q Not only could you but so could Detective McCrory?

A Yes.

Q And if you search your recollection, there was a mug shot on file in the New York City Police Department files with regard to Joseph Della Valle?

THE COURT: Would you not yell. I mean it is not going to do you any good with him anyhow.

MR. SLOTNICK: I'm sorry, your Honor. I got a little excited.

THE COURT: I didn't hear anything exciting but don't yell.

BY MR. SLOTNICK:

Q Isn't it a matter of fact that there is or was a mug shot on file with the New York City Police Department that contained photographs of Joseph Della Valle?

A I don't think so because it's like I say, I don't think he had a previous criminal record.

Q Were you informed at the time that you submitted your affidavit or during your investigation, which began in September of 1971, that Joseph Della Valle had just left the hospital because he had been shot in a bar? Do

1           you remember that information at all?

2           A       I know he had been shot, yes.

3           Q       Do you remember about what time or when he  
4           was shot?

5           A       In the summer of '71, maybe.     I'm not sure.

6           Q       Do you know that he left the hospital on Septem-  
7           ber 10th?     Did you know at that time that he left the  
8           hospital on September 10th?

9           A       No, I didn't.

10          Q       Did you know what hospital he was in?

11          A       No, I didn't.

12          Q       This was the target of your investigation?

13          A       That is correct.

14          Q       This was the man you were investigating?

15          A       That is correct.

16          Q       This was the man you were investigating?

17          A       That is correct.

18          Q       Did you ever interview any doctors who had at-  
19          tended him?

20          A       No, I didn't.

21          Q       Do you know who shot him?

22          A       No, I don't.

23          Q       Do you know anything about that case?

24          A       Just bits and pieces.

rda88

Eaton-cross

1                   Q       Well, what did you know then about the case?

2                   A       There was another guy that was killed when he  
3                   was shot.

4                   Q       At that time?

5                   A       Yes.

6                   Q       You are sure about that?

7                   A       Nicholas Narducci, yes.

8                   Q       What other knowledge do you have about the  
9                   case?

10                  THE COURT:     About what, the shooting case?

11                  MR. SLOTNICK:     Yes.

12                  THE COURT:     What is the relevance of it?

13                  MR. SLOTNICK:     To show the grand investiga-  
14                  tion this overplayed prior to his entrance into a wire  
15                  tap proposition.

16                  THE COURT:     No, go on to things closer to  
17                  our case, please.

18                  MR. PEPPER:     Your Honor, is Mr. Slotnick  
19                  representing now, as an offer of the court, that these  
20                  events took place when they did?

21                  THE COURT:     Which events?

22                  MR. PEPPER:     The so-called shooting and the  
23                  hospitalization.

24                  THE COURT:     I don't care what he is represent-  
25

rda89

Eaton-cross

ing. There have to be some limits even on weekdays, let alone Sundays, as to the scope of cross examination and I am trying to indicate some --

BY MR. SLOTHICK:

Q You indicated to District Attorney Kaufman and Fishman that you would have a problem identifying the voice of Joseph Della Valle, is that correct?

A That is correct.

Q You indicated that to them on December 8, 1971, prior to the time they went in to see the judge?

A That was to Mr. Fishman.

Q You indicated that to him?

A Yes.

Q As a matter of fact, during the entire course of the investigation and the preparation of the search warrant or the electronic eavesdropping papers you indicated you would have difficulty listening or hearing the voice of Joseph Della Valle, is that correct?

A Distinguishing it.

Q Would you indicate to me how you told Mr. Fishman and/or Mr. Kaufman or anybody else you would be able to distinguish the voice of Joseph Della Valle?

A How I would be able to?

Q Yes.



rda90

Eaton-cross

1  
2 A The only thing I could go on were the two  
3 previous conversations.

4 Q And the content of the conversation that you  
5 would overhear, is that correct?

6 A I don't know about that.

7 Q You don't know about that?

8 A I don't know if the content of the conversation  
9 is not going to indicate him unless his name is used.

10 Q What was his name as known to you at that  
11 time?

12 A Joseph.

13 Q Joseph?

14 A Yes.

15 Q Any other names you knew at that time?

16 A I didn't know his nicknames, no.

17 Q As a result of your investigation you found  
18 out he had nicknames?

19 A Yes.

20 Q On December 11th you learned that he had a nick-  
21 name by the name of Blackie, is that correct?

22 A That is correct.

23 Q Would you tell us how you discovered that?

24 A I was on the Theriot Avenue telephone.

25 Q You were on the Theriot Avenue telephone?

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A No, that was on the Theriot Avenue tap, wire tap telephone.

4

5

Q Did you hear that conversation in which somebody called him Blackie?

6

A Yes, I did.

7

Q When did you hear that conversation?

8

A I think within the next few days. I think also that they also called him Jimmy during that conversation.

10

Q This is one of the original conversations with the young lady?

11

12

A Yes. She called him Jimmy and she referred to him as being called Blackie or something.

13

14

Q To refresh your recollection --

15

MR. SLOTHICK: I'll withdraw that state-

16

ment. Did you in some papers indicate that on or about the 11th of December you overheard a conversation in which Joseph Della Valle was heard on the Theriot Avenue telephone in which he was called Blackie and/or Jimmy?

18

19

20

A I heard a recording of that conversation.

21

22

Q A recording of that conversation. Do you remember when you heard that?

23

24

25

A I think it was within that day or within a few days. One of the officers in the Bronx played, I think, two conversations over the telephone to me in Manhattan

rda22

Eaton-cross

in the other plant.

Q Those were conversations that had occurred on the 11th of December, is that correct?

A I think it is the 11th, I am not sure.

Q Do you remember the name of the detective that played that conversation to you?

A No. It would be one of the detectives who had signed in a log either that day or the next day.

Q Detective Morgan sound correct?

A It could be.

Q Would Detective Wolfe?

A It could be either one of those.

Q So by the 13th you knew, at best by the 13th you knew that he had a nickname called Blackie, is that correct?

A That is correct, yes.

Q As a result of overhearing his conversation on a tape played to you over the telephone?

A That is correct.

Q And how long was that tape conversation that you overheard, if you can recollect?

A I can't.

Q And you heard the voice on the other end of the telephone, is that correct?

rda93

Eaton-cross

1           A       I heard two voices on the other end of the  
2  
3 telephone.

4           Q       One was a female, one was a male?

5           A       That is correct.

6           Q       The male's voice, was that Joseph Della Valle's  
7 voice?

8           A       It must have been.     They told me it was.

9           Q       So you took that to be Joseph Della Valle's  
10 voice?

11          A       That is correct, yes.

12               MR. SLOTNICK:     Do you have the Theriot Avenue  
13 logs, please?

14               (Mr. Peffer hands to counsel.)

15               MR. SLOTNICK:     1C for identification, I  
16 would move it in evidence.

17               MR. PEPPER:     No objection, your Honor.

18               (Defendants' Exhibit 1C was received in evi-  
19 dence.)

20 BY MR. SLOTNICK:

21           Q       I show you the Theriot Avenue logs.     These  
22 are the logs of the tape recordings of Joseph Della Valle's  
23 house, is that correct?

24           A       Yes.

25           Q       Would you read the names of the detectives that

opened up the plant?

A Opened the plant?

Q Yes, the first detective's names.

A Eaton and Mallard, myself and Detective Mallard.

Q And is there another detective present some time later?

A Detective Wolfe, yes.

Q Now, can you, from looking at the logs, pinpoint the conversation that you contend was played to you over the telephone?

A There were a couple.

Q Excuse me?

A There were a couple played.

Q Start with the first one that you heard.

A I believe it is this call at 12:50 p.m.

Q On Friday, December 10th, is that correct?

A I think it is the 11th. It looks like the 11th.

Q I guess it does. 12:50?

A Yes.

Q And you overheard that conversation, and as a result of that you realized that Joseph Della Valle had not only the name Blackie but also Jimmy?

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A That is correct, yes.

Q And you had another opportunity to hear his voice?

A That's also correct.

Q The recording that you heard was a copy of the tape recording made by Detectives Wolfe and Morgan, is that correct?

A No, it was the recording of the conversation; it wasn't a copy.

Q It was the original tape?

A Yes.

Q And at 12:50 on December 11th do you recollect --  
MR. SLOTNICK: Withdrawn.

May we have that tape recording? That's real  
LE. I would like to play it for the court, if I may.

MR. PEPPER: What tape?

MR. SLOTNICK: The Della Valle tape, Theriot Avenue.

MR. PEPPER: Didn't you take those and make copies?

MR. SLOTNICK: I listened to them in your office.

MR. PEPPER: They are not here.

MR. SLOTNICK: I have asked for them at the

beginning.

MR. PEEPER: They were produced to you, you had an opportunity to copy them and you didn't do so. I'll be happy to bring them down in the lunch hour.

MR. SLOTNICK: That's fair enough.

BY MR. SLOTNICK:

Q Can you pinpoint any other conversation that you overheard of target Della Valle?

A I think I heard this conversation at 1:30 asking about the car keys.

Q That's the one entitled in the logs "Blackie to Pat, male to female"?

A Yes.

Q Any other conversation on that day?

A Not offhand, no.

Q And this would be then your hearing the conversation either on the 12th, which is a Sunday, or on the 13th, which is a Monday, is that correct?

A That is correct. It could even be on the 11th. I'm not sure.

Q Do you know whether you went to the plant at all during those three days?

A I don't think so.

Q And you didn't go down anyhow just to listen to the tape again because the phone connection was pretty

1 rda97

Eaton-cross

2 good?

3 A It seemed pretty good, yes.

4 Q Now, at this time up until the 12th --

5 MR. SLOTHICK: Do we have 1B?

6 (Mr. Feffer hands to counsel.)

7 Q These are the logs of the bar and grill, is  
8 that correct?

9 A Yes.

10 Q At this time up until the 13th would you go  
11 through them and see whether you had picked up the voice  
12 of an individual who you believed to be Joseph Della Valle?

13 A Through the 13th, is that what you are saying?

14 Q Through the time you heard the tape, the 13th.

15 A No, there is only a reference to him being  
16 near the bar at one point.

17 Q A reference to him being near the bar at one  
18 point, what page is that?

19 A Page 8.

20 Q Page 8. It says: "Blackie is Joseph Della  
21 Valle." Who wrote that in? Do you recognize that?

22 A That's my handwriting.

23 Q That's your handwriting?

24 A That is correct.

25 Q That would have happened on December 12th at



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rda98                      Eaton-cross

1000

about 2043, is that correct?

A        Yes, that's correct.

Q        So on December 12th, 2043, we have now established  
without any question, even in your mind, that you know  
Blackie is Joseph Della Valle?

A        That is correct.

Q        You didn't write that in afterwards?

A        No.        This is a daily log sheet.

Q        So therefore we can now establish that you  
have heard that tape, 2043, which is 8:43 at night, by  
December 12th, 8:43 at night?

A        That is correct.

Q        December 12th being a Sunday.        Am I correct?

A        Yes.

Q        Now, prior to listening to that tape recording,  
and we would assume that some time between the 11th and  
the 12th you heard that, if the conversation took place on  
the 11th, would you look at the logs of the bar and grill  
and see whether there is any indication of a Beansie  
prior to that?

A        Prior to this?

Q        Yes, yes.        Well, specifically on page 8, 1600,  
1640.        On the page where you learned that Blackie is  
Joseph Della Valle, look at 1640.

1           A       Yes.

2           Q       What is that notation?       Was that notation  
3                   in your handwriting?

4           A       Yes.

5           Q       What does it say?

6                   It was an incoming call, there was a male --  
7                   it looks like "Beansie's wife is looking for Beansie."

8           Q       What's at 1640?

9           A       That is correct.

10          Q       You about 1600; what do you have there, an  
11                   incoming call?

12          A       Yes.

13          Q       Does that say, "Beansie for Ernie or for the  
14                   Shadow," or something like that?

15          A       "Ernie looking for the Shadow."

16          Q       In other words, you had heard Beansie's voice  
17                   at this time, is that correct?

18          A       I had heard it, yes.

19          Q       Did you identify that voice at 1600 as being  
20                   that of Joseph Della Valle's?

21          A       I began to have doubts about this.

22          Q       You began to have doubts about it?

23          A       That they were the same person, yes.

24          Q       And at 1640 I presume your doubts must have  
25

1 gotten a little larger when you heard Beansie's wife?

2 A It didn't even dawn on me until just now when  
3 you pointed it out.

4 Q Do you recollect the voice of the wife, if  
5 you remember. I guess you wouldn't.

6 A At that time, no, no.

7 Q And prior to that, December 12th at 1600,  
8 were there any other calls that you had heard which you  
9 believed were that of Joseph Della Valle? Can you tell  
10 from looking at the log?

11 A It doesn't seem to -- I browsed over it.  
12 It doesn't indicate that he was heard. You are talking  
13 about in the bar, right?

14 Q That's right, Diane's Bar.

15 A It doesn't indicate that he was heard.

16 Q In other words, you have no recollection,  
17 or the logs would not indicate, that at that point in time  
18 you had overheard an individual that you believed to be  
19 Joseph Della Valle, is that correct?

20 A That is correct. The only belief I had was  
21 that maybe -- from the information that I received that  
22 this Beans or Steve or no name, whatever the conversation  
23 was, seemed to be there a lot.

24 Q Excuse me. I didn't hear you.

rdal01

Faton-cross

1           A       He seemed to be in this bar a lot, this male,  
2  
3       either unnamed or Beans or Steve.       And there was a  
4       tendency on our part to believe that it was Della Valle.  
5       I imagine --- I think -- no, I don't see any entries  
6       here.

7           Q       Up until the time -- we are talking about up  
8       until the time you had heard the other conversation on  
9       Sheriot Avenue.

10          A       Right.    I don't see any here.

11          Q       As a matter of fact, up until -- well, you  
12       said that you had some doubt at 1600 that that was actually  
13       Joseph Della Valle, the Ernie for the Shadow business?

14          A       Some time during this thing after hearing  
15       that voice and the names Jimmy, Blackie, Joey, I started  
16       to lean away from the theory that they were the same guy.  
17       I still wasn't sure.

18          Q       But actually you hadn't to your mind heard  
19       Joseph Della Valle on the bar yet?

20          A       To my mind, after conferring with our officers,  
21       that Beans was Della Valle.    But I started to have  
22       doubts around this period of the 12th or the 13th.

23          Q       Well, other than the two notations in the  
24       log, 1600 and 1640, where do you see Beansie's name?

25               MR. SLOTHICK:    For the record, 1600 reads:

1 "1609 incomplete, Beansie-Ernie for Shadow."

2 I meant "incoming" rather than "incomplete."

3 Q Then 1640, which is two phone calls away, for  
4 the purpose of the record, says: "1640, male, incoming,  
5 Beansie wife for Beansie, NT NP."  
6

7 What does that mean?

8 A Not there.

9 Q NP?

10 A Not pertinent.

11 Q Can you find prior to that any other reference  
12 to Beansie?

13 A No. The problem here is that the voice, this  
14 male, Beansie, had been on the phone but he didn't use  
15 a name. Nobody used a name. The conversations were  
16 very brief and short. But eventually it turned out that  
17 Steve or Beansie, whatever the name is, do eventually show  
18 up as the same guy, who at that time we thought was Della  
19 Valle.

20 Q So at that time, at least by Sunday, the 12th,  
21 you had heard an individual who you believed to be Della  
22 Valle?

23 A Suspected, right.

24 Q Suspected to be Della Valle?

25 A Right.

1                   Q       This was an individual that was constantly on  
2  
3       that phone?

4                   A       Yes.

5                   Q       It sounded as if he was, I guess, the phone  
6       answerer?

7                   A       At one point.

8                   Q       And it was a regular course of conduct at this  
9       period of time that one man would generally answer the  
10      phones when they came into the bar, is that correct?

11                  A       Several people answered the phone but this  
12      man was there quite often.

13                  Q       Would you say in your overhearing of all the  
14      individuals he answered the phone more often than anybody  
15      else, if you remember?

16                  A       Maybe in the evenings.

17                  Q       Do you remember him answering the phone gener-  
18      ally, "Hello, Mondo's," or something of that sort?

19                  A       No.     I just think "Hello."

20                  Q       On December 9, 1971 you transcribed a phone call  
21      between Sam and Dennis at 1545, which I guess is 3:45 in  
22      the afternoon, is that correct?

23                            Look at the logs of the bar.

24                  A       15452

25                  Q       Yes.

1 A Yes.

2 Q You transcribed their entire phone conversation,  
3 is that correct?  
4

5 A Eventually, yes.

6 Q Not only did you transcribe it on tape but you  
7 typed it out?

8 A It was typed eventually, yes.

9 Q Did you have a suspicion that any one of those  
10 two individuals was Joseph Della Valle?

11 A As I said, I didn't recognize his voice. I  
12 didn't know who they were.

13 MR. SLOTHICK: Your Honor, may I play that  
14 for your Honor?

15 THE COURT: Sure.

16 MR. SLOTHICK: We have a defense recorder,  
17 your Honor.

18 Our representation to the court, your Honor,  
19 is that what is about to be played is transcribed and I  
20 believe the transcript is now in evidence. If it is  
21 not, we would like to put it in evidence for the purpose  
22 of the hearing, bearing the "Aramaic" number 1-something  
23 or other.

24 THE COURT: "Aramaic number," did you say?

25 MR. SLOTHICK: I'm sorry. Arabic.

THE COURT: Page 12

MR. SLOTNICK: Page 1, from the log of December 9, 1971, as transcribed by Detective Eaton.

Q Is that correct, Detective?

A Yes, it was.

(Tape played.)

BY MR. SLOTNICK:

Q Detective Eaton, do you have a copy of the transcript?

A No.

Q Can you hear and make out the voices?

A It's difficult.

Q Is this approximately what you overheard when you were listening with your machine running?

A I don't know. That's not a very good tape.

Q That's not a very good tape.

A I don't know what I hear. I couldn't say it was like that, it was better, it was worse.

MR. SLOTNICK: Since this is the first conversation, can we borrow the government's tape on it?

MR. FEEFER: The government's tapes are the same as those tapes. They are just a copy.

Q What you heard on your tape recorder, what you hear is what was taped, is that correct?



1           A       Yes.

2           Q       The same audibility came through the machine  
3 as it was placed down on the tape, is that correct?  
4

5           A       As represented here, yes.

6           Q       If this is the same as the government's tape?

7           A       I'm going on that assumption, yes.

8           MR. PEPPER:   Your Honor, this is not the  
9 original tape.   I have not heard the original tapes.  
10 They may be far more audible.   I am saying we have a  
11 copy of the originals and defense counsel have.   The  
12 originals may be more audible.

13           THE COURT:   Have defense counsel heard the  
14 originals?

15           MR. PEPPER:   No, they haven't.   We gave  
16 them copies.

17           MR. SLOTNICK:   It is my information we didn't  
18 get them because they were sealed.

19           THE COURT:   Now they are unsealed?

20           MR. SLOTNICK:   That is correct.

21           THE COURT:   If there is any question that  
22 you want to raise, Mr. Feffer, since you have control of  
23 these tapes, to suggest that the originals are more  
24 audible than these copies, I think you had better proceed  
25 to satisfy yourself on that and not merely suggest it,

rdal07

Eaton-cross

1 but either represent it or don't represent it. And  
2 then if you represent it and any question arises as to  
3 the audibility of what was originally heard, you better  
4 bring in the original tapes.  
5

6 MR. PEPPER: All I am saying, your Honor,  
7 is the originals, as far as I know, are available and  
8 they can be used. That's the point I want to make.  
9

10 THE COURT: I understand that. But since  
11 there are limits to my time and limits to technology, I  
12 am going to assume that these copies are as audible as the  
13 originals and you had better satisfy yourself that they  
14 are not. If you want to rest any contentions on that,  
15 you had better be prepared to indicate them.

16 MR. PEPPER: I wasn't trying to make that  
17 point. I say if they want to use the originals, they  
18 can.

19 THE COURT: I can't imagine why they want  
20 to use them if they have reason to believe that these are  
21 just as good as the originals. If you have any doubt  
22 about that or they do and anybody is going to raise any  
23 question to that effect, I don't want to be left speculating  
24 here starting about October 15th. I'm telling you that  
25 I'm going to assume, since you have worked together,  
both sides, and had the opportunity for discovery, that

rdal08

Eaton-cross

1 I'm not going to let anybody suggest to me or the jury  
2 on trial that there is some meaningful difference between  
3 the originals and the copies without having satisfied  
4 himself that he's got a ground for that suggestion.  
5

6 I'm not meaning to dispute with either of you.  
7 I'm just telling you a ground rule. Because now in the  
8 colloquy with the witness there is some question of  
9 whether it is audible, and you say that maybe the original  
10 is more audible. If you are saying that, you may chit  
11 chat with us now, but before we get to the real cutting  
12 edge of this thing we are not going to converse and specu-  
13 late about it; we are going to know, one way or the other,  
14 if anybody means to make anything of it.

15 I have said a lot about it but these little  
16 mechanical things get to be problems, and I trust that  
17 much we can agree on, yes?

18 MR. FEEFER: Yes, your Honor.

19 MR. SLOTHICK: Yes.

20 BY MR. SLOTHICK:

21 Q If I showed you a copy of the transcript, would  
22 that aid you in listening?

23 A Possibly.

24 Q I show you my copy of the transcript of the  
25 first conversation. Now, would you read it through

and tell us --

MR. SLOTHICK: Withdrawn.

Q Upon listening to this conversation, were you first apprised of the fact or did you first believe that Joseph Della Valle was part of the conversation or were you listening to a narcotics-related conversation?

A I didn't know who was on the phone.

Q So you kept on listening?

A That's correct.

Q Did there come a time when you listened and you were satisfied that Joseph Della Valle was not on the phone?

A I think so, yes.

Q When did that time come, if you recollect?

A I don't know. I became aware, it sounded like certain other crimes and certain other things were happening.

Q So you recorded the conversation?

A Yes.

(Tape played.)

Q The voice that we have just heard, was that the voice you thought was Joseph Della Valle?

A I said I couldn't determine who they were.

Q You couldn't determine who they were?

1 A What's right.

2 Q From your listening at this point does it  
3 appear to be a conversation of two police officers?  
4

5 A No, they seem to be talking about a police  
6 officer.

7 (Tape played.)

8 Q At this point have you recognized any voice  
9 at all or is it the same answer, that actually throughout  
10 the entire conversation you don't recognize Joseph Della  
11 Valle? Is that correct?

12 A That is correct.

13 Q Do you at this point realize that this is a  
14 nonnarcotic-related conversation?

15 A Yes.

16 Q You do?

17 A Yes.

18 Q But yet you continued listening?

19 A That is correct.

20 (Tape played.)

21 Q That was marked nonpertinent on the logs, is  
22 that correct?

23 A No, that's not correct.

24 Q How is it marked on the logs?

25 A With an asterisk.

rdalll

Eaton-cross

1           Q       For the purpose of transcription, is that  
2                   correct?  
3

4           A       Yes.

5           Q       At the time you made the asterisk did you know  
6                   that none of the voices were that of Joseph Della Valle?  
7

8           A       I wasn't sure.     I didn't think they were.

9           Q       You knew it was a nonnarcotic-related conver-  
10                  sation?

11          A       That is correct.

12          Q       And you knew that at the time you made this  
13                  recording that you only had the authority to listen to  
14                  Joseph Della Valle in conversation with others, is that  
15                  correct?

16          A       That is correct, yes.

17          Q       And that was your specific instructions that  
18                  you were given by all of your superiors, Lieutenant Hill,  
19                  district attorneys?

20          A       I was also given instructions that if I had  
21                  evidence of other crimes, to bring it to the attention  
22                  of the district attorney.

23          Q       In other words, did they tell you that if you  
24                  picked up two individuals who were not named and who you  
25                  had no authority to listen to and they were discussing  
                other crimes, that you were to continue listening?

rdall?

Faton-cross

A They might not have directly told me that, but maybe a cop or an agent pulling guns on people.

Q Was it your understanding that you had been instructed and told that you could listen to people who were not named on the caption of the order who were not Joseph Della Valle if they were discussing the commission of other crimes? Was that your understanding?

A Not in those words, no.

Q Well, was that your understanding substantially?

A Substantially I knew I was only supposed to listen to Joseph Della Valle.

Q Not only you were supposed to --

MR. PEPPER: May he finish the answer?

THE COURT: Let him finish.

A The instructions about other crimes, I assume -- maybe it's an assumption on my part that here is a crime involving cops or agents and they were pulling guns on people. I should record this conversation.

Q Although it was your feeling that you weren't doing the right thing with regard to the tape recording?

A That's conceivable, yes.

Q Is it is conceivable or is that correct?

A I really don't know how I felt at that time. I

1 am telling you now it is conceivable that what you say  
2 is correct.  
3

4 Q Well, your instructions at that time were to  
5 listen to only Joseph Della Valle only when he talked  
6 about narcotics, is that correct?

7 A Or things relating to narcotics.

8 Q If Joseph Della Valle were to have a conver-  
9 sation about attending a basketball game, you were satis-  
10 fied that it was to be nonnarcotic related, would you listen  
11 to it anyhow and record it or would you shut the machine  
12 off.

13 A I wouldn't know whether it was really relating  
14 to basketball until the conversation was practically  
15 over.

16 Q So you had to listen to almost every conver-  
17 sation of Joseph Della Valle to make that determination?

18 A Yeah, I guess close to that.

19 Q You couldn't tell. Maybe at the end  
20 of a half hour he would say something narcotic related?

21 A It's conceivable.

22 Q Therefore you would listen to every conver-  
23 sation of Joseph Della Valle?

24 A That is correct, unless on its fact it was of  
25 no value. If he called a lawyer or his doctor or anything



like that.

Q        Well, privilege?

A        Well, even, you know -- you got to weigh it.  
I don't know how to explain it to you.        If he calls  
his girlfriend; then it is really just a girlfriend conver-  
sation, no sense listening to it.

MR. SLOTNICK:        For the record, your Honor,  
the SONY counter indicates the first conversation took  
33, whatever they are, but it is 33 in the window.

THE COURT:        33 whatever they are.        That's  
going to help a lot.

THE WITNESS:        That's feet.

MR. SLOTNICK:        Thirty-three feet of tape.

Your Honor will have a copy of it.        If your  
Honor would desire, we can give you the time on the con-  
versation.

THE COURT:        Let's stop for lunch, gentlemen.  
We will come back at 2:15.

(Luncheon recess taken.)

AFTERNOON SESSION.(2:15 p.m.)

(In open court.)

G E O R G E            E A T O N            resumed.

MR. SLOTNICK: I offer reel 1B of what we now know to be the Theriot Avenue tapes and ask that the box be marked accordingly and that the tape be deemed to be marked in evidence.

(Defendants' Exhibit 1D marked for identification.)

MR. FEEFER: No objection.

(Defendants' Exhibit 1D was received in evidence.)

## CROSS EXAMINATION

BY MR. SLOTNICK:

Q Detective Eaton, I show you Defendants' Exhibit 1C, which are the Theriot Avenue logs, and you have indicated to me that you heard the conversation appearing at page 2 on December 12th, is that correct? It is December 11th conversation that occurs at 12:50.

A No, I don't see that.

Q That's past noontime.

A Yes.

Q I ask you if this is the conversation that you overheard on or before December 12th?

A That is correct.

(Tape played.)

MR. SLOTHICK: Can your Honor hear it?

THE COURT: Well, I can't make out all the lyrics but I can hear something.

MR. SLOTHICK: We didn't bring earphones. I didn't realize the court conditions would be this bad. I don't know if the government has earphones.

You don't have earphones?

MR. FEEFER: No, I don't.

MR. SLOTHICK: For whatever it is worth, perhaps the orving room would be more appropriate.

THE COURT: Well, is there a transcript of what you are about to play?

MR. SLOTHICK: There is a partial transcript on the tape, on the log, your Honor.

Is there an extra copy of that?

I think we may have an extra copy.

Does the government have an extra copy of it?

MR. FEEFER: No, your Honor.

Page 12 of 1250 is what we are referring to and the logs go in inverse order.

(Tape played.)

BY MR. SLOTHICK:

1 Q That was the conversation you heard on or  
2 before December 12th?

3 A Yes, it is.

4 Q By the way, during the lunch break did you hap-  
5 pen to refresh your recollection as to when you first heard  
6 that conversation?  
7

8 A No, I didn't.

9 Q Was there another conversation you heard at  
10 the same listening?

11 A I think there is a call right after that con-  
12 ceivably could be the other call.

13 MR. FEITELL: I can't hear. The witness  
14 has his hand in front of his mouth all the time.

15 THE WITNESS: The call right after that.

16 (Tape played.)

17 BY MR. SLOTNICK:

18 Q And that was the second conversation that you  
19 heard was that of Joseph Della Valle, is that correct?

20 A That is correct.

21 Q And you heard that on or before December 12th?  
22 Now I replay Government's Exhibit 9.

23 (Tape played.)

24 Q The voice that you have heard -- one of the  
25 voices you heard on that tape is Stephen Dellacava, is that

1 rdall18 Eaton-cross

2 correct?

3 A That is correct.

4 Q This was the voice you heard after listening  
5 to the Della Valle Theriot Avenue tape on or before De-  
6 cember 12th, is that correct?

7 A I heard -- I don't know if that conversation  
8 is after but I heard the voice.

9 Q Government's Exhibit 2 first conversation takes  
10 place on December 21st.

11 A That is correct.

12 (Tape played.)

13 BY MR. SLOTTICK:

14 Q Whose voice is that at the end of that tape  
15 we have just heard, after "Have a happy"?

16 A You mean Dellacava?

17 Q That is correct. That's Dellacava's voice?

18 A Yes.

19 Q That's the voice you heard and were listening  
20 to subsequent to hearing the Della Valle tape introduced  
21 hereto as Exhibit D, is that correct?

22 A That is correct.

23 Q On listening to them side by side are those  
24 voices similar to you or the same, at this point?

25 A At this time I have listened to Stephen Dellacava

rdall?

Eaton-cross

over the year and there is no way they could sound the same to me.

Q At the time you listened to Stephen Dellacava's voice after December 12th had you taken a tape recording of the Theriot Avenue tape with you and listened to it on a few occasions?

A With me, no, no.

Q Had you listened to it elsewhere on a few occasions?

A I did listen to certain conversations off the Theriot Avenue wire tap with Joseph Della Valle and a correction officer, but I don't know at what period of time.

Q You say the first time that you heard the voice of Joseph -- what you believe to be Joseph Della Valle was after listening to Exhibit D, which is the Theriot Avenue tape, is that correct?

A That is correct.

Q There is an extensive conversation between Joseph Della Valle and a correction officer by the name of Jerry that's heard on December 12, 1971, is that correct?

A I don't think so.

Q At 1520?

A No, that's speaking to his mother.

Q In other words, at 1520 on December 12th the

1 rdal20 Eaton-cross

2 conversation between Jerry occurs with Mrs. Della Valle,  
3 is that correct?

4 A That's how it appears.

5 Q Not with Joseph Della Valle?

6 A Yes.

7 Q If it is indicated you heard that conversation  
8 between Jerry and Joseph Della Valle in your Diane 2  
9 affidavit, that would be incorrect, is that correct?

10 A I don't understand.

11 Q If you indicated any place that was one in  
12 which Joseph Della Valle was a participant, would that  
13 be incorrect?

14 A If I indicated I heard Blackie Della Valle in  
15 this conversation?

16 Q Yes.

17 A That would be incorrect.

18 Q On December 13th, page 5 of the logs, is that  
19 the conversation which you overheard between Joseph Della  
20 Valle and the correction officer?

21 A Yes, I believe so.

22 Q When did you overhear that conversation?

23 A I'm not sure, counsel.

24 Q Would it be within a day of the conversation?

25 A I recall hearing these conversations but I don't

1 remember when I heard them.

2 Q Now, to date the voices side by side sound  
3 distinctively different to you?  
4

5 A To me they sound different. However, they  
6 are both deep and they are both -- they both have a  
7 certain accent to them or way of speaking.

8 Q Well, isn't it a matter of fact that on the Diane  
9 2 bar tape recordings you heard many deep, accented-type,  
10 certain-way-of-speaking voices?

11 A That is correct.

12 Q Did you at any time take that tape of Della  
13 Valle's voice and bring it with you to the Diane Bar 2  
14 plant?

15 A I don't think so.

16 Q Would there have been any problem with your  
17 doing this?

18 A We were working short-handed and we couldn't  
19 afford to have men running back and forth.

20 Q Other than that, could you have gone  
21 over and got the copy? Was there anything there in the  
22 law that barred you?

23 A No.

24 Q As a matter of fact, you made copies all the  
25 time?



rdal22

Eaton-cross

1

2

A No, we didn't.

3

4

Q As a matter of fact, you made copies some of the time?

5

6

7

A I think a copy of these conversations was made for the State Correction Department or State Parole, whichever one.

8

9

10

Q Well, the officers that were involved with the electronic eavesdropping, did they make copies of tape recordings at all, if you know?

11

12

13

A In the Bronx only of these specific conversations, I believe, to turn over to the State Department of Correction.

14

15

16

Q So there were copies available?

A They were made specifically for them, not for me.

17

18

19

Q Who made the copies, if you know?

A I don't know. I know they got a copy of the conversations.

20

21

22

Q In other words, what you are telling us is that copies of these tape recordings were never made, they were just kept on the original spool?

23

24

25

A That's correct, yes. They were made at the DA's office at a subsequent date.

Q Well, didn't you have tape recorders with you

2 other than the ones that were used, that were plugged in?

3 A We at one point or another had tape recorders  
4 we used for playback, where we took the original reel  
5 and played it back.

6 Q At the plant?

7 A Yes.

8 Q In your mind would anything have barred you  
9 from going to the plant at Theriot Avenue, wherever it  
10 was, near Theriot Avenue, and making a copy of that tape  
11 recording, anything that could have stopped you from doing  
12 that?

13 A Time; didn't have enough time.

14 Q Other than that.

15 A No.

16 Q Nothing wrong with doing that?

17 A No, nothing wrong with doing that.

18 Q How many fellow officers did you work with?

19 There was Mallard, Wolfe, Roche, there was Morgan, Finelli?

20 A At that point in Manhattan I believe it was  
21 just myself and Mallard. When we weren't there there  
22 might have been Morgan or Wolfe. I'm not sure. But  
23 there was very seldom a time when the three or four of us  
24 were present at the same plant at the same time.

25 Q Didn't Wolfe and Morgan know you had difficulty

rdal24

Eaton-cross

with regard to the voice of Joseph Della Valle?

A That is correct.

Q Isn't it true that Wolfe and Morgan together monitored the tape that we have just heard, Defendants' Exhibit D?

A One of them did, yes. I don't know if both of them did.

Q Well, you have the logs there. Page 2.

What time was the plant opened?

A Twelve noon, Wolfe and Morgan, right.

Q At 1250 who was present at the plant?

A It appears that both Wolfe and Morgan were present at the plant.

Q At 1345, when that conversation ended, who was present at the plant?

A According to this, Wolfe and Morgan.

Q Until the plant was closed that evening, does your log indicate that Morgan and Wolfe left that plant?

A No, but it doesn't necessarily have to indicate it. It's possible that one of them might have left the plant.

Q Does the log indicate 1943, Detective Morgan and Wolfe closed plant?

A There or shortly thereafter, yes.

1           Q       Isn't it a matter of fact it was your procedure  
2           that when you signed in or signed out or left the plant  
3           you would make a notation on the log?

4           A       Sometimes.

5           Q       An officer could leave the plant without  
6           making such an entry.     It's possible,     Then, again,  
7           it's more probable that it didn't happen, is that cor-  
8           rect?

9           A       I can't answer that.     I wasn't there.

10          Q       Wasn't it Lieutenant Hill's instructions that  
11          if an officer left the plant, for him to sign out on the  
12          log?

13          A       If he had time to do that, he would do that,  
14          yes.     I'm not sure that it was his specific instruc-  
15          tions to do that.     We did it as a matter of course our-  
16          self.

17          Q       Well, who called you and played this Della  
18          Valle tape to you?

19          A       I told you before, I don't remember who played  
20          it but they played it to show me that he was using  
21          different names.     While they played that they played the  
22          following conversation.

23          Q       By the way, when you say different names, actually  
24          he only used one name on that tape, Blackie, is that cor-  
25

rest?

A I think he was referred to as Jimmy in the beginning of that tape.

Q Isn't it correct he referred to Jimmy as a third party rather than himself?

A I didn't get that impression. Maybe you could be right.

Q Have you heard that tape recently?

A No.

Q You now recognize that to be the voice of Joseph Della Valle, is that correct?

A I believe that is the voice of Joseph Della Valle.

Q Do you have the Diane's Bar log?

A No.

MR. SLOTHICK: May we have it, please?

(Mr. Taffer hands to counsel.)

Q Turn to December 11th (handing).

MR. FINFER: Do you have a page number?

THE WITNESS: Six, I think.

Q Do you find an entry for December 11th in and around noon?

A Yes, I do.

Q Will you tell me who was at the plant during

1 that period of time?

2 A Detective Mallard and myself.

3 Q Now, you are sure that you were there about  
4 noontime?

5 A That's how it looks, according to this.

6 Q Well, what is your best recollection?

7 A I don't have any independent recollection of  
8 this.

9 Q Well, isn't it true just above 1205 is written  
10 Detective Mallard and Faton?

11 A That's right.

12 Q The next notation is 1205?

13 A That is correct.

14 Q So from noontime till 4 o'clock in the after-  
15 noon, do the logs indicate that you and Mallard are at the  
16 plant?

17 A They seem to do that, yes. However, it  
18 appears that Mallard was monitoring the machine.

19 Q Why would you say that?

20 A Because this is not my handwriting.

21 Q And do you recollect now that during that period  
22 of time you received a call from Detective Wolfe who played  
23 the Della Valle tape to you on the phone?

24 A No, I don't recall him specifically.  
25

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Q Was it shortly thereafter?

A I said a short time after that call came in I was made aware of it and I listened to them over the telephone. What day it was, I don't know, counsel.

Q If it happened December 11th at noontime, to your best recollection, was it that day or was it the subsequent day?

A I can't recall.

Q Where were you when you heard the phone call?

A I was in the plant in Manhattan.

Q In the plant in Manhattan?

A Yes.

Q That was in the school?

A That is correct.

Q Who else was with you?

A According to this, Detective Mallard.

Q And a call came in and what was the context of the call?

A Between me and the other detective?

A Yes.

A Just to the fact that he says, "This guy is using another name." Now, this is not verbatim, this is just what I remember, that he was using another name, Blackie or Jimmy.

rdal29

Eaton-cross

1 I said, "Let me listen to the call." He played  
2 that call and the following call. I wanted to hear his  
3 voice anyway. This could have occurred possibly the day  
4 before, I don't know, I don't remember. I don't  
5 remember when I was told that he was using another name,  
6 but it was shortly after these calls, the same day or the  
7 next day.  
8

9 Q But there is no question it happened before  
10 December 12th?

11 A Yes, because I put his name down on December  
12 12th.

13 Q As a matter of fact, didn't the detective tell  
14 you that we now have a good sample of his voice?

15 A I asked to hear the conversations.

16 Q Why?

17 A So I could hear his voice and get a better  
18 idea what I'm looking for.

19 Q Now, you indicated that the first time the name  
20 Beans came up was a result of the December 10th proposi-  
21 tion at 1916 -- I am sorry; not 1916 -- December 11th,  
22 at 1600.

23 A At 1600?

24 Q That's true. December 12th.

25 A Are you sure, counsel?



1 Q I don't know. I'm asking you.

2 A Wait, yes, there is something. 1600?

3 Q That is correct.

4 A There is two calls, one right on top of the  
5 other, yes.

6 Q And now you have the name Beansie?

7 A Yes.

8 Q And you hear the voice of Beansie?

9 A Yes.

10 Q And then there is another call where Beansie's  
11 wife calls for Beansie, is that correct, at 1640?

12 A That's how it appears, yes.

13 Q And you indicated earlier that you now were not  
14 too sure whether that was Della Valle or not?

15 A That is correct, yes.

16 Q What steps did you take to further assure  
17 yourself?

18 A I can't recall specifically but I would have  
19 tried to find out something about the Steve or Beans if  
20 in fact Della Valle had used that name before.

21 Q Did you do that?

22 A I think I did, yes..

23 Q And did you come up with anything?

24 A Not right away, no.

1           Q       How did you go about attempting to find out  
2       that information?  
3

4           A       I asked other officers in my office, which I  
5       don't like to do, and I might have spoken to Detective  
6       McGrory again.     I don't know.

7           Q       Well, nevertheless you now know as a result of  
8       your investigation you were told that Beans and Steve  
9       were not pseudonyms for Blackie Della Valle, is that cor-  
10      rect?

11          A       I assume, is that what you say?

12          Q       Were not aliases for Blackie Della Valle?

13          A       I didn't know, I still don't know.     It still  
14      put doubts in my mind that we were listening to the right  
15      guy.

16          Q       What did you do to find out whether this was  
17      the right man you were listening to?

18          A       I don't recall.

19          Q       In fact, you had an order saying you could  
20      only listen to Joseph Della Valle, is that correct?

21          A       That is correct.

22          Q       You understood that order to mean that?

23          A       That is correct.

24          Q       You listened to a man who was in conversations  
25      you listened to in their entirety, is that correct, at this

rdal32

Eaton-cross

time, December 12th?

A I believe so. Most of his conversations were very short.

Q You told me originally if you picked up the subject you would listen to the entire conversation because something with regard to narcotics could be slipped in at the end, didn't you say that this morning?

A That is correct, yes.

Q So therefore you listen to all of the Beansie-Steve conversations, which we now know to be Dellacava conversations?

A I don't think that's correct.

Q On December 12th, do you remember?

A I don't remember.

Q Wasn't it your course of conduct at that time if you picked up a subject you would listen to almost everything?

A Except within areas, yes.

Q Well, boyfriend-girlfriend or privileged communication?

A That is correct.

Q You told me that you believe at 1600, with some doubts, that Beansie was also Della Valle, is that correct?

rdal33

Eaton-cross

1  
2 A I was not sure.

3 Q Therefore, you would listen to the entire  
4 conversation of Beansie?

5 A I think so. I could have shut him off,  
6 too. And he was --

7 Q Do you know whether you did or didn't?

8 A No, I don't.

9 Q 2025, male-female for Beans.

10 MR. FEFFER: What page?

11 MR. SLOTNICK: I'm sorry. Same log, Decem-  
12 ber 12th, male-female for Beans.

13 Q Is that another Dellacava conversation you  
14 listened to?

15 A No. He wasn't there. A male answered  
16 the phone, a female asked for Beans. She was told he  
17 wasn't there and that was it.

18 Q And it was marked nonpertinent?

19 A Right.

20 Q Now, on 2025 in my logs is a handwritten  
21 Dellacava in there. Do you know who wrote that in?  
22 Do you have it in your logs?

23 A No, sir.

24 Q The call above that at 2000, which would be  
25 3 p.m. -- am I correct?

rdal34

Eaton-cross

1  
2 A Yes.

3 Q -- incoming, is Max to Petey Bones?

4 A Yes.

5 Q Did you listen to that entire conversation?

6 A I don't know.

7 Q Did you mark extra pertinent and star it?

8 A Yes. I think this was picked up on a play-  
9 back.

10 Q The log bore and asterisk and H and PP on it.  
11 Isn't it a matter of fact that you listened to the conver-  
12 sations?

13 A Yes. I don't know if it's the entire  
14 conversation but I would assume it was.

15 Q Did you at that time suspect that Mike and Petey  
16 Bones, either one of the two, might have been Joseph Della  
17 Valle, or was it because they were discussing other  
18 criminal activity?

19 A I don't know what the conversation is about.  
20 I can't answer you.

21 Q Did you suspect at that time that Mike or Petey  
22 Bones, either one of them, was Joseph Della Valle?

23 A I don't know.

24 Q You don't remember?

25 A No.

1           Q       How many people were you listening to during  
2           the course of December 9th to December 13th which you  
3           thought were the subject of the order, Joseph Della  
4           Valle?  
5

6           A       I think there were two people there that might  
7           have sounded the same as to what I thought Della Valle  
8           sounded like.     One of them was Beans or Steve and there  
9           was another deep-voiced man there too.

10          Q       And you listened to him, is that correct?

11          A       I believe so.     I'm not sure.

12          Q       Did you listen to children talking to each  
13          other?

14          A       I don't think so.

15          Q       You don't think so?

16          A       No.

17          Q       That would be an incorrect thing to listen to,  
18          wouldn't it?

19          A       I would imagine, yes.

20          Q       Would you record people speaking in foreign  
21          languages in their entirety?

22          A       Yes.

23          Q       If you didn't know what they were talking about?

24          A       Yes.

25          Q       Even if you didn't know what they were talking

about?

A That's correct, because I couldn't tell who they were or what they were talking about.

Q Even if they were two females?

A I don't think so.

Q By the way, will you look at the log of Piane's Bar, page 3, 1240. Is that your handwriting?

A Page 3?

Q Yes.

A No, that's not my handwriting.

Q That's either Wolfe or Morgan's handwriting, is that correct?

A I think so.

Q Excuse me?

A I think so, I said.

Q Well, do you get an indication from the log that they were there and they were listening?

A Yes.

Q They are also officers that were listening at the Theriot Avenue location, is that correct?

A That's correct.

Q And when you first appeared after their chores were done and your monitoring began, you would read the logs, is that correct, as you testified to?

1           A       That's correct.

2           Q       Did you see the name Fat Beans on the bottom  
3 of that log on page 3?

4           A       I see it there, yes.

5           Q       Did you see it then?

6           A       Most likely, yes.

7           Q       Most likely?

8           A       Yeah, I probably did, but it says, "He's Fat  
9 Beans."       What does that mean?

10          Q       Well, wasn't it a matter of fact that eventually  
11 you started to listen to Beans on a regular basis?       Didn't  
12 you listen to this phone conversation?

13          A       This one here?

14          Q       Yes.

15          A       I probably did listen to it.       If this was  
16 recorded I probably listened to it, yes.

17          Q       Why would you record it and why would you listen  
18 to it?       This is December 10th, Mr. Eaton.

19          A       If these conversations were reported on the  
20 tape and I played back the tape I probably would have  
21 heard this conversation.

22          Q       Is there a notation any place that it sounds  
23 like Joseph Della Valle?

24          A       It just says, "Male and male."       Who is a  
25



rdal38

Eaton-cross

party to this conversation, I don't know.

Q On December 10th, at page 5 of the Diane's Bar log, there is a male-female conversation, 1842, marked "NP."

A Yes.

Q Is there anything about that entry in the log that would indicate to you that that was a Steve Dellacava conversation?

A No, there isn't.

Q Where is not?

A No.

Q Is there anything about that log that would indicate to you that you believed it was a Joseph Della Valle conversation at the time you heard it?

A No, there isn't.

Q That's your handwriting, is that correct?

A That is correct.

Q And there is nothing about that that would indicate to you it is a Joseph Della Valle conversation?

A Not on the face of it, no.

Q Well, is there anywhere that you can look that will make your recollection better right now? Is there any aid, any transcript, anything you want?

A I don't know if there is a transcript. If

rdal32

Eaton-cross

there is a transcript -- I know what the telephone number is. You are asking me a difficult question to answer. I don't know what I thought at this time, though.

Q Now, tell us, knowing the telephone number, whose conversation was that?

A Probably Beans.

Q Okay. And do you know that he spoke to his girlfriend for about five minutes?

A No, I didn't.

Q You couldn't tell from your log?

A No.

Q But you know the next call is five minutes away?

A That's not necessarily an indication that the previous call was five minutes long.

Q In your best recollection, did Mr. Dellacava generally speak to 221 -- that phone number, a female by the name of Jean, for a lengthy period of time or were they generally short calls?

A I think those calls were lengthy calls. After a while I became aware that he did call this number, yes.

Q That was his girlfriend?

A I guess so, yes.

Q And they were rather lengthy calls?

rdal40

Eaton-cross

1  
2 A Yes, they were.

3 Q Is there anything about this call to indi-  
4 cate to you that it was not the average length in call?

5 A Not in looking at this transcript. This  
6 doesn't tell me anything.

7 Q There is nothing on this log to indicate to  
8 you that was Joseph Della Valle?

9 A No.

10 Q At 1916 is there anything on your log to  
11 indicate to you that that's Stephen Dellacava speaking  
12 to his son, Carmine?

13 A No, there isn't, no.

14 Q I represent to you that what you are about to  
15 hear from defendants' spool is the call as written down  
16 1916 in the log.

17 MR. SLOTNICK: May we have that heard?

18 MR. FEFFER: Date, please.

19 MR. SLOTNICK: December 10th.

20 (Tape played.)

21 BY MR. SLOTNICK:

22 Q Do you hear a man say, "Put your mother on"?

23 A I didn't. Will you play it back?

24 Q Yes.

25 (Tape played.)

1 rdal41

Eaton-cross

2 Q Did you hear a man say, "Hello, Dad"?

3 A No, I didn't.

4 (Tape played.)

5 Q Isn't this the voice or the voice in the bar  
6 that you believed to be Joseph Della Valle at the time?

7 A Yes, it was.

8 (Tape played.)

9 Q Does this sound to you like a 23-year-old  
10 voice or the voice of a 23-year-old male?11 A No, it doesn't, but neither does Joey Della  
12 Valle.13 I'm listening to a voice that I know very well  
14 now, and for me to think back then what I thought then,  
15 I can't do it.16 Q What do you think now in listening to it in  
17 your enlightened stage.18 THE COURT: Is it relevant, what he thinks  
19 now?20 MR. SLOTHICK: It may be. It may be more  
21 reasonable now than it was then.22 MR. FEFFER: I fail to see the relevance of  
23 what he thinks now as well. It seems to me the crucial  
24 time was when he was monitoring the conversation what he  
25 in good faith felt was the voice of Joseph Della Valle.

rdal42

Eaton-cross

1 THE COURT: It seems not to be relevant but  
2 I'll allow it.  
3

4 THE WITNESS: Could you repeat that, please.  
5 (Record read.)

6 A There is a difference in their voices. At  
7 that time I didn't think there was a difference. Like  
8 I had those two tapes of Theriot Avenue, I began to get  
9 doubts it was the same person, but it took time to  
10 prove it.

11 Q During the course of this tape I'd like you to  
12 listen to the conversation. You monitored this and  
13 you listened to it in the school basement, is that cor-  
14 rect, the plant?

15 A Yes.

16 Q I'd like you to listen to here whether a man  
17 is speaking to his son and whether he asks for his wife.

18 (Tape played.)

19 A He didn't ask for his mother. I timed it.  
20 That was about 35, 40 seconds, that call. It is  
21 difficult to determine who that really is even now. That's  
22 a very bad recording.

23 THE COURT: Was that call logged?

24 MR. SLOTNICK: That is correct, your Honor.

25 THE COURT: Is the caller identified in the

log?

MR. SLOTNICK: No, he is not, your Honor.

THE COURT: Well, I will say, having listened to it two or three times, I'm not surprised. I don't think it would tell me now, and I'm trying to pretend I'm enlightened, and I am partially, anything in those 35 seconds, just because I'm not going to be able to go back and listen to all this again and again.

I must say that no matter how many times lawyers listened to such a garbled transmission for such a brief time I can't learn a single useful thing for this hearing from that kind of short, barely intelligible kind of recording.

MR. SLOTNICK: May I ask the detective this question?

Q Was there anything you just heard on this tape recording that was narcotic-related?

A In that conversation?

Q Yes.

A Frankly --

Q Yes or no.

A No.

Q But you listened to the entire conversation?

A I couldn't tell what it was about.

1                   rdal44                   Eaton-cross                   1046  
2                   THE COURT:     I don't know why you labor it.  
3     The point I am trying to make to you is I can't imagine  
4     under any rational rule of law how that 35-second thing  
5     could mean anything if it related to Billy Jean Bobby Riggs.  
6     By the time you try to figure out what's going on it's  
7     over.     I don't know what police officers are supposed  
8     to do about it.     Maybe the law says they have to do  
9     something but I can't imagine what.

10           Q     Is this the condition, is this the type of  
11     listening you were able to do?     Was it this muddled  
12     when you first heard it?

13           A     A lot of it was.

14           Q     This muddled as it came out of the machine?

15           A     This specific conversation, I don't know.     A  
16     lot of them were, yes.

17           MR. SLOTNICK:     We will have to check, as  
18     your Honor suggested, about the originals.     There may  
19     be a distinct difference.

20           Q     Look at the logs and indicate to me whether  
21     there were any other suspects that you had at that time  
22     to be Joseph Della Valle other than Beans or Steve?

23           A     No, I think that was it.     We had a general  
24     consensus of opinion that it might be him, although I came  
25     to believe that it possibly wasn't him.

rdal45

Eaton-cross

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Q We are talking about December 11th now.

A Not the 11th. Whenever I heard those calls in the Bronx, I was still confused with these different names. In my own mind I thought, how can a guy have five different nicknames? That started to bother me. I think that's what started it. He calls himself Joey, Blackie, Beansie and Steve. It's all right to have a few but I think that's what kind of started it. The voices to me were similar but all these different names didn't make any sense to me.

Q But yet you continued to listen to Steve, Beans?

A Because I wasn't sure in my own mind if it was him or wasn't him. Because I didn't think it was normal for a guy to have five nicknames doesn't mean he can't.

Q That is correct, but in your own mind you were concerned?

A Yes, I was.

Q That's a normal reaction.

On December 11th, at 1809, we have that familiar phone number beginning with area code 201.

A Yes.

Q Detective Eaton was monitoring at this time, is that correct?

A That's not correct.



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Q Who was monitoring at this time?

A Detective Mallard.

Q Did you listen to the tapes that Detective Mallard monitored?

A At this point in time?

Q Yes.

A I don't know. I had other duties to take care of. That's why he was on the machine. Specifically what they were, I don't know.

Q Well, do you know that all of the Beans --

MR. SLOTNICK: Withdrawn.

Q What does that 201 number signify to you?

A It signifies a telephone number in Leonia that belongs to a Jean Pino, P-i-n-o.

MR. FEFFER: Where is that?

MR. SLOTNICK: December 1st, page 1 of the logs.

THE WITNESS: Page 6 of the logs.

Q She is known to you as who? What is her relationship with regard to any of the individuals involved in this case?

A In my opinion?

Q Yes.

A It's a mixed relationship --

1                   Q       No, no.

2                   MR. FLEFFER:     He was answering.

3                   THE COURT:     You are asking and let him  
4  
5 answer.

6                   A       It's a mixed relationship.     She seems to know  
7 certain things he is doing which I feel are narcotics-  
8 related.     She is also his girlfriend.

9                   Q       Let's take the fact of she being his girlfriend.  
10 You have no question about that?

11                  A       After this period of time I kind of leaned  
12 towards that, yes.

13                  Q       On December 11th, at 1800 which is 7:00 at  
14 night, you say --

15                         THE COURT:     Make it 6:00, but I don't  
16 really care.

17                  MR. SLOTNICK:     You are right, your Honor.

18                  Q       You say of whoever is listening has to assume  
19 that this is Beans speaking to his girlfriend, am I cor-  
20 rect, after all this experience that you had?

21                  THE COURT:     What do you mean by after all  
22 the experience?     All the experience he had after two  
23 days or all he has now?

24                  MR. SLOTNICK:     Then, after two days.

25                  A       Like I told you, it was the belief at this time

rdal48

Eaton-cross

by most of the monitoring officers that Steve and Beans were Joseph Della Valle, and some officers wouldn't put a name down if the guy didn't say his name on the phone. It might have been one of these because I see names and I don't see names.

Q Now, on December 11th are you familiar with the 201-461-7383 phone number?

A On December 11th?

Q Yes.

A No.

Q When did you first become familiar with that phone number?

A I imagine after it would be called about five or six times I guess.

Q On the average did you recollect during your monitoring how many times he called his girl friend, Jean Pino?

A I have no idea.

Q Or did she call him on occasion, if you remember?

A I think she did. I'm not sure.

Q At 1805 there is a call between Fred and Angelo.

MR. FEEFER: Date, please.

MR. SLOTNICK: Still on December 11th.

2 Q What is transcribed and listened to in its  
3 entirety. Would you know why Fred and Angelo were  
4 listened to?

5 A No, I wouldn't. I didn't intercept that  
6 call.

7 Q They have no key in your mind to Della Valle  
8 at all, no one thought he was Fred and Angelo also,  
9 is that correct?

10 A I don't know. I didn't intercept the call.

11 Q This is Detective Hallard's and he will  
12 have to answer for that, is that correct?

13 A I guess so.

14 Q You didn't do the transcript of Red and Ralph  
15 and the other transcripts?

16 A I may have done the transcript. I may have  
17 picked this up in replaying the tape at a later date.

18 Q The next page, at 1830 there is a Steve-female  
19 marked HP.

20 A Yes.

21 Q Is that the same Steve as Beans that you recol-  
22 lect?

23 A I have no idea.

24 Q You were monitoring on that day?

25 A Even if I was I wouldn't really know.

rdal50

Eaton-cross

Q Unless you heard the tape or read the transcript?

A That is correct, yes.

Q By this date have you relistened to the Della Valle Theriot Avenue tape again?

A You mean those two conversations?

Q Yes, and any others.

A Well, this is during the period we discussed. It was some time during this period that I did hear those tapes.

Q On or before 8:43 of December 12th there is no question that you listened to those tapes?

A Yes.

Q Have you listened to them again on December 13th?

A I heard them -- whatever day it was, 11th or 12th, that I heard them, that's when I heard them, those two conversations. Subsequently I guess, within the time of that wire tap, the 30 days, I probably heard them again, near the end of the month, probably.

Q December 13th, page 9, I guess, of the logs, are you the monitoring agent, officer?

A Partly, yes.

Q At 1713, is that your --

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A No, it is not.

Q Do you recognize the number?

A Well, it's off by one number but it is probably his girlfriend. It is listed wrong in these -- the pen register might have come up with the wrong numbers.

Q But that's Steve and Jean?

A I think so, yes.

Q 1642, is that you?

A No.

Q Is that asterisked in your copy?

A Yeah, there is an asterisk, yes.

Q What would that indicate to you?

A That this conversation was recorded and transcribed.

Q And who were the named individuals in this conversation that was recorded and transcribed?

A It looks like one may have been Mel and the other one Frank.

Q Mel and Frank?

A Yes.

Q At 1812 is there another asterisk?

A Yes.

Q Do you know who the parties to those conversations or that conversation was?

A I do now, yes. At that time I didn't know.

Q Well, somebody wrote in some names there. When did that happen?

A During the course of the conversation.

Q Well, who wrote the names in?

A I did.

Q What names did you write in?

A Freddy, Sam are inside the premises and James out.

Q And did you listen to that conversation in full?

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A I believe I did.

Q Did you record that conversation?

A Yes, I did.

Q Did you transcribe that conversation?

A Yes.

Q Did you believe one of the parties at that time was Della Valle?

A I don't think so.

Q Has your order changed at all, have you been told that you can listen to whomever you so desire in the interim?

A No. I think these conversations came in under one of those -- there was an indication that these guys were involved in narcotics also.

Q But the Joseph Della Valle was not a party to that conversation?

A No. I don't know how long this conversation was either.

Q I didn't ask that question. Was he a party to the conversation, yes or no?

A I don't think so.

Q Turn the page, 1940. Is that your handwriting?

A Yes, it is.

Q Asterisk, Sam, female, do you remember that



conversation?

A Yes, I do.

Q Is it listened to in full?

A I don't know.

Q Is it transcribed?

A I don't know that either.

Q Isn't it a matter of fact any time you put an asterisk next to a conversation it was transcribed?

A Not always, no.

Q This is a conversation between whom and whom?

A A male using the name Sam and a female.

Q Did you believe at any time during the course of that conversation you were listening to Joseph Della Valle, yes or no?

A No, I didn't.

Q Did you make a notation underneath what the conversation was about?

A Yes, I did.

Q Would you read it to us?

A "Sam asks wife for number of Shackter. She speaks in Spanish," and there is some business about scrambling the numbers. I don't exactly know what this means. It's just something that went on with the telephone.

rkr4

Eaton-cross

Q And the next converstaion, is that asterisked?

A It is, yes.

Q And that's between whom and whom?

A Probably the same guy from before, Sam.

There is a parenthesis around the name Lou. She might have called him Lou. I don't know. And a woman named Sue.

Q What else is written in there?

A "Asks if Al got in touch with Herbie, Sue calls him Lou. Al is in Brooklyn."

I don't know if these conversations were recorded in full, by the way.

Q If I tell you they were transcribed would you take my word for it?

A Okay, I will.

Q Did you have any suspicion that Joseph Della Valle was a partof that conversation?

A No, I didn't.

Q 1952, can you read off the inscriptioonto us?

A Incoming, Beansy, Marilyn.

Q What does that mean to you?

A Well, I know who Marilyn is.

Q Who is Marilyn?

A She is a bookmaker's girlfriend, and I had heard her voice before.

Q And who is Beansy?

A She must have called him Beansy.

Q Is there any indication in the log that this was Joseph Della Valle?

A Well, this was the guy we suspected of being him.

Q You weren't sure?

A That's right.

Q This was a bookmaking conversation, am I correct?

A No, it's not, no. I know the voice from someplace else, that's what it amounts to.

Q 1254, what is your notation?

A "Beansy wife."

Q What is the phone number?

A 379-4020.

Q Did you ever check that phone number out?

A Yes, I did.

Q What is the location?

A That phone belongs to one Dominick Alocco, so I was mistaken in my identity of this voice.

Q That's not the first mistake you made, is that correct?

A That is correct, yes.

rkr6

Eaton-cross

Q But at that time you believed that that was Beansy speaking to his wife?

A That's what I thought, yes.

Q Now, we are at December 13. Do you still have an ongoing investigation with regard to Joseph Della Valle?

A That is correct.

Q What else do you find out about him?

A About who he is running around with?

Q Where he is, what his family connections are. You tell me what you found out about him by December 13.

A Our purpose was to intercept and surveil him and try to get him in the possession of narcotics, not to do a family background on him. He frequented the bar on several occasions. We do have observations of him in the bar. Then he went to places on First Avenue, Third Avenue. It was just as difficult as it had been before and we weren't getting too much help, except when we thought that Beansy and Steve with him we thought we were home.

Q Didn't you find it strange that at the times you were surveilling him and seeing him outside there were allegedly phone calls being received by Beansy?

rkr7

Eaton-cross

1 A Those things did not coincide.

2 Q You are sure about that?

3 A As far as I know.

4 Q I asked are you sure about that?

5 A I'm not positive, no.

6 Q As a matter of fact, did you check that out?

7 Did you, officer?

8 A I know we had very little time for surveillance.

9 Q Did you check out to see whether during a  
10 period of surveillance or a time when Joseph Della Valle  
11 was at Thieriot Avenue in the phone that Beansy was  
12 in the bar talking on the phone?

13 A No.

14 Q You never checked that out to see if it  
15 coincided?

16 A No, I didn't.

17 Q In retrospect you realized you should have?

18 A (No response)

19 Q Now, let's turn to page 11. At 2020 there  
20 is an asterisk and it -- is this your handwriting?

21 A Yes.

22 Q You read it to us, please.

23 A "Incoming to Beans, Leo, male Negro. Beans,  
24 Leo tells male sick sick sick. Try and keep in touch  
25

with me."

That's after the male had asked how do you feel. This conversation I think is a total of five lines when it's finally transcribed.

Q It's asterisked?

A No asterisk on these papers here.

MR. SLOTNICK: Is your Honor without a great disadvantage in not having the log?

THE COURT: No. I think I'm following. If there is anything you want me to take particular note of, tell me about it.

Q You had Beans, "Beans (Leo)?"

A Yes.

Q Were you confused as to whether that was Beans or Leo?

A Yes, I was.

Q Did they sound alike?

A I don't think so. Frankly, I don't know why this is in here. Something must have indicated something. I'm not sure.

Q But that was in your handwriting?

A Yes, it was.

Q And this is to your mind was a narcotics conversation, is that correct?

1  
2 A Yes.

3 Q In fact you remember transcribing it,  
4 recording, listening to it?

5 A That's correct, yes.

6 Q But yet you had a question mark about Leo  
7 and you don't remember what that's about?

8 A No, I don't.

9 Q Well, the way it reads on the logs it looks  
10 as if you thought it was either Beans or Leo speaking.

11 A I don't know why that's there, quite frankly.  
12 I couldn't remember.

13 Q You fairly well established that the voice of  
14 Beans and Steve are one and the same?

15 A Yes.

16 Q There is no question in your mind at this  
17 time?

18 A That is correct.

19 Q That Steve is Beans?

20 A That is correct.

21 Q And Beans is Steve?

22 A Yes.

23 Q And Joseph Della Valle is Blackie and Jimmy?

24 A That is correct.

25 Q And that Beans, Steve may not be Blackie,

1 Jimmy, Joseph Della Vallue at this time?

2  
3 A Yes.

4 Q By the way, up until this dato is there any  
5 conversation that you log in as that belonging to Joseph  
6 Della Valle, JDV, Joseph, Joseph Della Valle, subject of  
7 the order; anywhere we can look in the logs to see if you  
8 have identified an individual as being that of Joseph  
9 Della Valle, the subject of your order?

10 A No. There is just mentioned -- he could  
11 have been on the phone and I didn't recognize his voice.  
12 He is not logged in as Joseph Della Valle, no.

13 Q You do eventually finally log in Joseph  
14 Della Vallue, JDV?

15 A Yes.

16 Q That's the King conversation that comes  
17 on the 19th?

18 A Yes.

19 Q Prior to that you don't?

20 A I don't think so.

21 Q I think I can represent that to you.

22 Now, on 1629 you are listening to Beans and  
23 a female. Is that correct?

24 A On the following page?

25 Q No, on December 14.



1 rkrll

Eaton-cross

2 A Is that page 12 you are referring to?

3 Q That is correct.

4 A Yes.

5 Q And the following two calls are Sam, female,  
6 Sam, Al Shackter. You are still listening to Al Shackter,  
7 aren't you?

8 A That is correct.

9 Q You have established in your own mind at this  
10 point that Sam and Al Shackter are not Joseph Della Valle?

11 A I believe that is correct.

12 Q But you listened to them. Not only do you  
13 listen to them, you listen to them in their entirety, is  
14 that correct?

15 A I don't know.

16 Q Isn't it a matter of fact that you have  
17 notations on that log indicating that you listened to a  
18 conversation between a Sam and an Al Shackter? Now, to  
19 date you know who those individuals are, don't you?20 A I know who they are now? I know who one  
21 of them is, yes.22 Q You listened to thier conversations on  
23 December 14, 1971, is that correct?24 A It could very well be. I don't know how long  
25 this conversation was.

1  
2 Q Certainly long enough for you to make  
3 notes about it, wasn't it?

4 A He could have called and said "Where is  
5 Herbie? And Al said I'll call him back."

6 MR. FEEFFER: May I suggest that the witness  
7 be permitted to look at the transcript. He has everything  
8 else but the transcripts of these calls. It may aid the  
9 Court as well as the witness. Because he is being asked  
10 questions about the substance of telephone conversations  
11 and we do have transcripts here.

12 THE COURT: It's going to make a difference to  
13 me, Mr. Slotnick, whether a conversation is 30, 60, 90,  
14 120 seconds long, as I have tried to indicate to you.  
15 So making a point of listening to a whole conversation  
16 may or may not be significant, depending on how long that  
17 whole conversation is. Therefore, I think Mr. Feffer's  
18 suggestion is not bad. Let's see what we can get about  
19 the length of them as you go through them.

20 MR. SLOTNICK: I'd also hope your Honor  
21 would take into consideration the fact that he knew  
22 who he was listening to and continued to listen.

23 THE COURT: I will try to take every  
24 pertinent thing into consideration, but let's cover what  
25 I asked you to cover and give him the transcript, please.

rkrl3

Eaton-cross

MR. SLOTNICK: One moment, please, your Honor.

(Pause)

MR. FEFFER: Your Honor, I have an extra set of transcripts here.

THE COURT: All right, you may supply it to the witness.

All right, Mr. Slotnick, Mr. Feffer has given him a copy.

Q Do you have a copy of the transcript?

A Yes, I do.

Q What page is that in your transcript?

A Well, I got page 10 here, February 14.

Q At page 7, let's go back to Sam with the female.

A Of the logs you are speaking about or the transcript?

Q From the transcript.

MR. SLOTNICK: Does your Honor have a copy of the transcript?

THE COURT: I don't even know. Is this the thing that I had earlier today?

MR. SLOTNICK: If I can see the first page

rkrl4

Eaton-cross

of that, your Honor.

Yes, that's the transcript.

Q Look at page 6, please.

(Witness complies)

Q What is the first conversation that you transcribe on page 6?

A The Mel and Frankie conversation?

Q That is correct.

A Yes.

Q Did you assume that any one of those individuals was Joseph Della Valle?

A Did I intercept this conversation?

Q Look at your log and tell us whether you did.

A No, I didn't.

Q You did not?

A No.

Q That was Detective Mallard, is that correct?

A That is correct.

Q And you don't know whether he thought that Mel or Frankie was Joseph Della Valle, is that correct?

A I don't know.

Q Didn't you leave each other notes or discuss the case with each other? Do you ever remember him telling you that he thinks Mel or Frankie could be Joseph

Della Valle?

A No, I don't recall him telling me that.

Q It's a matter of fact, isn't it, that you knew or you know that he never thought that Mel and Frankie was Joseph Della Valle, is that correct?

A I don't know what he thought. He marked this conversation non-pertinent to begin with originally. So I don't know what he thought when he intercepted.

Q And then he transcribed it?

A I did.

Q You transcribed it?

A I probably did, yes.

Q Now, he thought it was non-pertinent and you thought it was pertinent?

A That's true.

Q And apparently in order for you to transcribe it you would have to listen to the tapes and find the conversation?

A That is correct.

Q Therefore Detective Mallard recorded that conversation?

A That is correct.

Q And he marked it non-pertinent?

A That is correct.

rkr16

Eaton-cross

Q But upon observation you felt it was a pertinent conversation, is that correct?

A I thought there may have been something here, yes.

Q And Detective Mallard never told you whether a Mel or a Frankie was suspected to be that of Joseph Della Valle?

THE COURT: Now, look, I would like you to cut out the repetition.

MR. SLOTNICK: Okay, your Honor.

MR. FEFFER: May I also just make this suggestion: It appears we are going through numerous telephone conversations. I think it might be very helpful to your Honor if an approximate time length is given as to each of these calls.

THE COURT: How do we get that down to the approximate time?

MR. FEFFER: You can probably take a guess from the length of the transcript, as to whether it's 30 seconds or below.

THE COURT: If you can, fine, but I don't know how long these people pause or how slowly they talk.

MR. FEFFER: If it can't be done, it can't be done.

rkrl7

Eaton-cross

1 THE COURT: You tell me. You are  
2 suggesting it. If you can make a reliable estimate,  
3 especially one that counsel may agree on, it might help  
4 us.  
5

6 MR. PEPPER: I think you can make a judgment  
7 on both of these by the length of the transcript  
8 involved as to whether it is in excess of a minute and  
9 below a minute and be fairly certain of that.

10 THE COURT: What do you think of that, Mr.  
11 Slotnick?

12 MR. SLOTNICK: I don't think you can, your  
13 Honor, because --

14 THE COURT: All right. We may be in these  
15 trenches all winter at the rate you are going. If you  
16 are going to do this, going conversation by conversation,  
17 you had better put the tapes on the machine and I'm going  
18 to make a judgment that any that is less than 90 seconds  
19 or so in length I'm not much interested in.

20 MR. SLOTNICK: If that's your Honor's  
21 judgment --

22 THE COURT: That is my judgment. Are you  
23 planning to go through these one at a time?

24 MR. SLOTNICK: In view of your Honor's  
25 ruling I have no choice, obviously.

rkrl8

Eaton-cross

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2 THE COURT: I'm giving you a choice. You can  
3 go through them or not go through them. But if you don't  
4 think the ones you are going through one by one are more  
5 than a minute and a half, I think it's worth your while  
6 to forget them because I don't think they are going to  
7 be very significant.

8 MR. SLOTNICK: In other words, any conversation  
9 over a minute and a half, your Honor, will assume is properly  
10 minimized?

11 THE COURT: I'm going to assume that police  
12 officers sitting in a plant with this equipment, as  
13 imperfect as I have learned in eight years it is, with  
14 background and foreground and sideground noises, if  
15 they don't pull the plug in under 90 seconds, have not  
16 done anything so wrong that I'm going to get very upset  
17 about. That is what I have decided. Whether it's  
18 Mel and Frankie or Abe and Steve or whatever.

19 Now, I think the cases already indicate that  
20 that is a rational sort of judgment to make. And since  
21 it involves certain legal premises I want you to tell me,  
22 do you think it's legally unsound?

23 MR. SLOTNICK: Absolutely.

24 THE COURT: How quickly do you think they must  
25 turn off the machine?



rkr19

Baton-cross

MR. SLOTNICK: I think there is a reasonable standard, not a 90-second rule.

THE COURT: Tell me what it is.

MR. SLOTNICK: A reasonable standard is whether a reasonable man or police officer realizes he is not listening to a named party he should shut the machine off.

THE COURT: How quickly do you feel you can tell after going over and over these and you have dug out the names, which I never hear the first, second or third time myself, how quickly are you going to say that that duty devolves on and over?

MR. SLOTNICK: I can tell you on the Thieriot Avenue tape recording whether I know I have Della Valle on the phone after 30 seconds, and that's a long period of time.

THE COURT: I'm afraid you have the advantage over me but I can't. I've been listening to more tapes than I would have thought bearable in the past few years. I don't find myself able to make those fine discriminations that quickly and I'm not clear that I have any basis for holding policemen to the kind of aural acuity you possess rather than less sharp hearing that I have. I just don't know how to do that. It

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Eaton-cross

seems to me I'm going to have to look to various indicia that are reasonably suggestive.

I think the cases do talk about the length of non-pertinent interceptions as a meaningful criterion. I just don't think I want to sit here and spend several hundred hours listening to you examine one by one on conversations that turn out to be less than a minute and a half or so.

So unless you can show me why I should allow you to do that, I think I'll stop you right now.

MR. SLOTNICK: All right.

THE COURT: Then if you can find some legal basis for making me change my mind we will let you go back through them and I will try to listen.

MR. SLOTNICK: May we have a five-minute break, your Honor, so I can set up the proper audio on this?

THE COURT: Yes.

(Recess)

MR. SLOTNICK: I'm going to attempt to do the tape business tomorrow when we can have earphones because I've established -- unfortunately I didn't realize under these conditions it's almost impossible to decipher the conversations. With leave of the Court I'd like to

rkr21

Eaton-cross

do that tomorrow. I'm not positive I'm going to give you leave. I had told you all to put together a day's listening. I'm not clear I'm going to do this twice. Both of you have done it for much of this vitally difficult day, I think I'm going to stop it right now. I'm going to do all my listening at once and then you can all argue and put it together. I don't think I'm going to sit here any more while witnesses are on the stand and interrupt while technicians are playing, and the next question and the next.

If you are through listening to Mr. Feitell, you listen to me.

I'd rather you wouldn't do that because I like the feeling that people are listening while I'm talking and not talking at the same time.

That is my strong preference. I don't see why I should not follow it, unless you can explain to me why.

MR. SLOTNICK: I'm not too sure I understand your Honor's preference.

THE COURT: I will do whatever listening you people want me to all at once. I told you to get together whatever you want me to hear. And notwithstanding that direction, both you and Mr. Feffer have chosen to have me listen and have a man testify and listen and

1 have him testify. At this rate it can go on forever.  
2  
3 I feel an obligation to all of us and to the business  
4 of this Court to see to it that this hearing doesn't  
5 last too much longer than the trial.

6 I've got to take some measures to bring it  
7 within manageable limits. I'm now trying to take one.  
8 You can examine these several witnesses, each of whom is  
9 taking much longer than he should and than I thought he  
10 would have. Then I'll do my listening.

11 I want to do it in that order. I'm not  
12 clear why I should offend either one of you. Both of  
13 you have chosen today to do it in a different fashion  
14 and I'm telling you I don't like it and I think we ought  
15 to stop it.

16 If one of you can tell me why it's indispensi-  
17 ble to a rational presentation and why I must put up  
18 with it, then of course I will. I'm trying to explore  
19 with you the possibility of my not doing it.

20 MR. SLOTNICK: It was my impression, your  
21 Honor, that the monitoring agent might have to explain  
22 why he listened to certain conversations beyond the  
23 duration of apparently what the Court of Appeals deemed  
24 reasonably necessary.

25 THE COURT: Which is how long?

rkr23

Eaton-cross

MR. SLOTNICK: I don't think you can put a length of time on it. I think a female-female conversation should be stopped immediately.

THE COURT: If you think that generally, then trot out your female-female conversations and make your argument about it and I will understand.

Now, give me some other examples of why I must go through this talking and listening and talking and listening kind of examination, because that one seems too clear to me that I can't imagine why you try to do that. If you believe that, it's the easiest thing in the world to demonstrate.

Now, give me some other examples of why we must proceed in this fashion.

MR. SLOTNICK: There may be, and I don't know, there may be some confusion by the witness at that time as to whose voices he is actually listening to. He already testified to that. There may be some other individuals who he thought were Joseph Della Valle. There may be a question about the alleged Joseph Della Valle on this tape recording as to whether that voice is even close.

Your Honor has listened to a specimen of Della Valle's voice and that is conceded by both parties

1  
2 and the Court can take judicial notice of the voice  
3 on Exhibit D is that of Joseph Della Valle. They  
4 overheard that voice on or before December 12.

5 I'd like to know why he picks out other  
6 voices or another voice and says that's also Joseph  
7 Della Valle. I think the Court can listen and make  
8 a determination.

9 THE COURT: I haven't heard him say that.  
10 If you have anywhere you think he is going to say that,  
11 fine, I'll listen to those examples. But all he has  
12 said is that for some period of time there was a thought  
13 that Beansy and Stevie were the same as Della Valle,  
14 and he hasn't indicated to me, nor has Mr. Feffer tried to  
15 bring out on his end of this thing that the officer  
16 thought that Abe or Fred or Al was Della Valle.

17 Now why you need to play me a lot of recordings  
18 to reach out for that possibility when it has not  
19 heretofore been argued I don't know.

20 MR. SLOTNICK: Because there comes a time  
21 when the officer believes he overhears Joseph Della Valle  
22 and one of our contentions is that that is incorrect.

23 THE COURT: Then get to it but I don't  
24 want to hear all these other things. Now, you under-  
25 stand me. Proceed according to our conversation.

Q Getting back to the beginning of the Diane's Bar tape recording, what was your general procedure when you arrived at the plant in the morning?

A On any given day, not just the first day?

Q General procedure, method of operation for the Diane Bar proposition.

A It got to the point where you dated it in the middle of a page and turned on the machine that had a pen register. One guy would monitor the machine, and if there were other officers there they would do the things that had to be done.

Q Your plant was in a school. Is that correct?

A That is correct, yes.

Q You used the Sandberg machine?

A I don't know -- I don't think it was this kind of machine. It was an older machine.

Q It was an older machine. Could you listen without recording?

A You could, yes.

Q In other words, if you pushed a button you could hear what was going on but your tape wouldn't run?

A You could do that. It was not done but you could do that.

Q But you could do that?

rkr26

Eaton-cross

1  
2 A Yes.

3 Q And was it possible for you to record  
4 without listening?

5 A Yes, I think so.

6 Q And were there times when you recorded --  
7 something happened to the tape and you had to re-record?

8 A There was one instance -- there were two  
9 calls that came in or one call, whatever it was, and  
10 I thought I heard something in the conversations or one of  
11 the conversations and I began to play it back. And then  
12 the pen register went off, indicating there was an incoming  
13 call coming in.

14 I stopped the machine, I put it in a monitor  
15 mode just long enough to see who it was, and then it  
16 wasn't really relevant. I don't recall who it was,  
17 but I just made a notation there was a call coming  
18 in and it would not be recorded. I might have written  
19 down the name of the parties. Then I continued the  
20 playback. And the pen register indicated when that call  
21 ended.

22 Q Could you explain to me why two conversations  
23 were recorded twice on the same spool of tape?

24 A Not recorded twice.

25 Q Did that happen at all?



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A No, I couldn't --

Q Not to your knowledge?

A No.

Q Was it possible for that to happen?

A No. I can't see how it could happen.

Q If it did happen would you indicate there was perhaps some tampering with the tape?

A I can't even get your point. I can't get two conversations.

Q Would you indicate if the same conversation was repeated twice on the same spool of tape, would you say that there was some tampering or something done with the tape that should not have been done?

A I would have no idea what to answer.

Q Yes or no?

A I don't know.

Q You don't know?

A I don't know.

Q Did you record any conversations twice on the same spool of tape?

A It's an impossibility.

Q So therefore if it did happen you would suggest that perhaps something was wrong with the tape or that perhaps somebody was taping on a tape. Is that

rdr28

Eaton-cross

correct, yes or no?

A I frankly don't know. I've never seen that happen.

Q On December 19 you overheard a phone conversation that you believed to be that of Joseph Della Valle, is that correct?

A That is correct, yes.

Q Is that indicated in your logs and your transcript?

A It's not indicated as Joseph Della Valle in the logs.

Q 1459, is that correct?

A That is correct, yes. It's "a/k/a Jim on the inside and Doris on the outside."

In the transcripts --

Q On the log doesn't it say "Joey a/k/a Jim"?

A I said that. In transcript it indicates, "In Joey," and possibly Joseph Della Valle. There is a question mark after the initials JDV.

Q Do you have hand notes page 16A?

A What page?

Q Is there a page 16A on what you have?

A Which is designated A?

Q The transcript, whose handwriting is that at

page 16 of the transcript?

A I don't know.

Q That's not yours?

A No, it's not mine.

Q There is no page 16A?

A This was referred to as an A plant, this was a B plant, unless that had something to do with this. That's not my handwriting.

MR. SLOTNICK: Does the government have that conversation, the one about Joseph Della Valle and Doris?

MR. FEEFFER: What do you mean does the government have that conversation?

MR. SLOTNICK: Is it ready and available, on a counter number?

MR. FEEFFER: It's on the dates. It's in the courtroom.

Q That conversation of December 19 assured you that you were not listening -- withdrawn.

That Beansy was not Joseph Della Valle?

A It indicated to me they were two different people, yes.

Q That took place at December 19 at 2:59 p.m., is that correct?

A Approximately, yes.

Q What did you do when you heard that phone conversation?

A Frankly there wasn't much I could do. I was alone in the plant. I would have liked to have gone out there and watched it and tried and take the customer. I believed the package was going down and these guys changed their plans on the telephone, I'd been standing there for nothing.

Q So you did nothing?

A Eventually I called Lt. Hill and told him what I thought. That's the only physical actions I could take at that time.

Q And what did Lt. Hill say?

A He said to notify Assistant District Attorney Clifford Fishman.

Q Did you have Fishman's home number?

A I don't ~~think~~ I did. I had to wait. I think the following day I spoke to him.

Q Did you know anybody that had Fishman's home number?

A Not at that time.

Q Did you try and call the district attorney's office?

1 A No, it was a Sunday.

2 Q The district attorney's office is open on  
3 Sunday, isn't it?

4 A Well, maybe. I didn't try to call him.

5 Q What did you do about the Beansy calls from then  
6 on in?

7 A I think the following day I spoke to Mr. --

8 Q From then on in on that day did you continue to  
9 monitor Beansy?

10 A Yes, I did.

11 Q Knowing he was not the subject of the order?

12 A Well, when I spoke to Lt. Hill I said that  
13 this guy Beansy in my opinion at this time is Joey  
14 Della Valle and Beansy were working as co-conspirators.  
15 I asked him what should I do. He says to see Fishman,  
16 try to get the wire amended and if anything comes up in  
17 the meantime that I'll have to take care of it. I  
18 recorded it.

19 Q Why did he tell you to get the wire amended?

20 A Because it looked like we had two different  
21 individuals. We also had a problem of positively  
22 identifying this guy Beans.

23 Q But you knew at that time that Beans was  
24 not Joseph Della Valle?  
25

1  
2 A That is correct, yes.

3 Q And you knew that you had to go through some  
4 judicial process to get another name, Beansy, on an order  
5 in order to listen to him, is that correct?

6 A That is correct, yes.

7 Q Now, you also knew at that time that if you  
8 didn't know Beansy's full name, that the Court would  
9 grant you an order if you asked for a wiretap of an  
10 individual by the name or known to you as Beansy, also known  
11 as Steve. Is that correct?

12 A That's not exactly correct. The district  
13 attorney's office would prefer to have a positive  
14 identification of a guy before they put a wiretap on  
15 him.

16 Q You aren't familiar with the fact that you do  
17 not have to have a positive identification? As a matter  
18 of fact, you have worked on wires in the past where  
19 nicknames were used to identify individuals?

20 A I have.

21 Q You were familiar with the fact that court  
22 orders were registered and issued based upon a nickname,  
23 is that correct?

24 A That's correct.

25 Q Isn't it a matter of fact you knew at that

rkr33

Eaton-cross

point if you went in you could present the district attorney with a name of Beansy also known as Steve or vice versa? Is that correct?

A That's correct.

Q And you didn't know his last name, is that correct?

A That's correct.

Q And you didn't know his last name, is that correct?

A It was done in only one case that I know of, I think.

Q Well, at that time you only worked on three prior wiretaps, is that correct?

A That is correct.

Q So in one out of three was done?

A I know what you have to go through to get a wiretap, counsel --

Q I'm not asking that question.

MR. FEEFER: Can the witness finish?

THE COURT: Your questions are very argumentative and they are asked very quickly and I'd like you to slow down and let him finish what he has to say. If you wish to move to strike you may move more slowly and I'll consider it deliberately and I'll either

1  
2 grant or deny your motion.

3 Q Then isn't it true of the three prior  
4 wiretaps that you had worked on, one of those three you  
5 received a court order allowing you to wiretap an individual  
6 who was known only by a nickname?

7 A That is correct.

8 Q And isn't it also true that you then knew  
9 that you could wiretap an individual whose nickname you  
10 knew?

11 A No, it's not correct. As far as they were  
12 concerned, and this is the impression I got, that was  
13 an exception. They want them identified before they go  
14 put in a wiretap on somebody.

15 Q At the time that you had -- on or before  
16 December 19, 1971, were you familiar with article 700  
17 of the criminal procedure law?

18 A To some extent, yes.

19 Q Had you read the statute?

20 A No.

21 Q Well, you knew that the statute indicated  
22 that you could wiretap a designated individual even though  
23 you didn't know his full name?

24 A I didn't know it to that extent. I know  
25 it had been done and I assume it was legal, so it's legal,



but for practical purposes it's not done that often as far as I know.

Q But nevertheless on December 19 after 2:59 p.m. you continued to listen to Beansy --

THE COURT: Mr. Slotnick, will you stop?

MR. SLOTNICK: I withdraw the question. It's repetitive.

THE COURT: Yes, but will you cut it out.

Q You spoke to Mr. Fishman on Monday, is that correct?

A I believe so, yes.

Q What did Mr. Fishman tell you?

A He told us to identify this gentleman, get all the information we could get on him, if we could, and he would try to move to have the order amended to cover this individual.

Q Did you continue listening to Beansy?

A Yes. He also said if he's a co-conspirator of his he will try to get this amended as soon as possible. In the meantime you will intercept his conversations.

Q Did you have a copy of the order allowing you to monitor Joseph Della Valle?

A In the plant.

Q Did you read the language of the order?

rkr36

Eaton-cross

1  
2 A At one point I did, yes, before it was  
3 signed.

4 Q Did you know that that order only allowed  
5 you to listen to conversations of people talking to  
6 Joseph Della Valle?

7 A The language was not clear. At one point  
8 I had an impression, especially after talking to Mr.  
9 Fishman, that the co-conspirators might come under this  
10 and this would definitely, as I saw it then, he would  
11 be a co-conspirator.

12 Q The language was not clear?

13 A I'm saying the language or the box in that  
14 order says something about Joseph Della Valle -- can I  
15 see it?

16 Q Of course.

17 (Handing to witness)

18 A It just says Joseph Della Valle at two loca-  
19 tions. Inside it says co-conspirators or agents some-  
20 place, or in my applications. Then I didn't read the  
21 order properly.

22 Q You didn't read the order properly?

23 A That's right.

24 Q Now that you read it it says intercept only  
25 conversations of Joseph Della Valle?

1  
2 A I see that, yes.

3 Q And so on December 19, 20, up through January  
4 6, you continued to listen to Beansy, is that correct?

5 A That is right.

6 Q Knowing he was not Joseph Della Valle?

7 A Knowing that and being told that it would be  
8 permissible, I did, yes.

9 MR. SLOTNICK: Move to strike the remainder  
10 of the answer, your Honor, as not being responsive.

11 THE COURT: No, denied.

12 Q And for the entire life of the order had you  
13 discovered up until January 6 on how many occasions you  
14 had actually overheard Joseph Della Valle on the Diane's  
15 Bar tap?

16 A I think there was one occasion where he was on  
17 three times in succession, I think. Other times --  
18 you have to remember that eventually I did hear these  
19 tapes again. I heard tapes relating to this business  
20 with the corrections officer, and from the 12th on I was  
21 beginning to feel that Beansy and Della Valle were two  
22 different people. The more I listened to Beansy  
23 and the few times I heard these other tapes from  
24 Thieriot Avenue I thought maybe I finally got the  
25 differences separated. And then there were subsequent

1  
2 times I played more tapes.

3 But the times and dates I don't know. But I  
4 think that Della Valle, at least I think I intercepted him  
5 on three occasions, the same time in succession, three  
6 different phone calls.

7 Q Before January 6?

8 A I think so. I'm not sure about that. I'm  
9 just recalling how many times I might have intercepted  
10 him.

11 Q During the two-month period, is that correct?

12 A At least in the two-month period, yes.

13 Q Would it be strange to you that in none of  
14 your affidavits is there an indication that you overheard  
15 Joseph Della Valle in the Diane's Bar tap more than  
16 once?

17 A Would it be strange to me?

18 Q Yes.

19 A It was strange to me, yes.

20 Q And wouldn't this be information that he  
21 would relay to a judge who was about to issue on the wire-  
22 taps?

23 A What's the bearing?

24 MR. SLOTNICK: Is there an objection?

25 A I don't know the question.

rdr39

Eaton-cross

THE COURT: I haven't heard an objection. If I had heard one I would have sustained it. But the witness said he doesn't really understand the purport of the question.

Q Did you in any court affidavit indicate that you had heard Joseph Della Valle more than once on the Diane's bar tapes?

A I don't know. I don't recall.

Q You don't recall.

What did Fishman tell you when you told him that you weren't listening to Joseph Della Valle, that you were listening to a different individual, Steve, Beans, as best you can remember?

A On the 20th?

Q On the 20th.

A Exactly I don't know, but the general ending of this meeting or conversation was that we should in fact amend the order to cover Della Cava or Beansy at that time.

Q Didn't he tell you "Keep on listening and I'll move to amend and get Della Cava into the order, or Steve Beansy into the order"?

A In essence that's what he said.

Q To keep on listening?

1 A Yes. I said that before.

2 Q And did he ask you to prepare an affidavit  
3 for him?

4 A He told me to get all the transcripts up  
5 on the bar and grill, Dick Bar, get them all typed  
6 up so he could do something, they could draw up an amend-  
7 ment to the order.  
8

9 Q Did you do that?

10 A It took some time. Yes, I did.

11 Q Did that make any difference in your  
12 affidavit to get all the transcripts up?

13 A Yes.

14 Q For an amendment?

15 A Yes. They would have to be prepared and  
16 be able to be incorporated into an affidavit.

17 Q Who else was working with you on the case  
18 at this time?

19 A Well, I think for the entire month of December  
20 we were working two-handed, most of the time in Manhattan,  
21 and sometimes we were working three-handed but it was not  
22 in the same ten-hour period.

23 Q When was the order to run out, if you remember?

24 A January 5 or 6, I'm not sure.

25 Q And isn't it a matter of fact that a new

1  
2 order was submitted when the old order was about to run  
3 out?

4 A That is correct, yes.

5 Q That there never was an amendment, there was  
6 just a renewal and an addition of a name?

7 A It was done at the same time.

8 Q There was never an amendment issued prior to the  
9 time running out? Is that correct?

10 A That is correct.

11 Q On December 23 you overheard a conversation  
12 between Mr. Della Cava and my client, is that correct?  
13 My client being Mr. Capra.

14 A Yes, that is correct.

15 Q This was some four days after you had dis-  
16 covered that you were listening to the wrong party?

17 A That is correct.

18 Q And that conversation was one of the conver-  
19 sations played this morning by Mr. Feffer, in which  
20 Mr. Della Cava calls up and asks for Johnny Hooks or  
21 Leo, please, and there is a long pause?

22 A That is correct.

23 MR. SLOTNICK: Exhibit B attached to my  
24 motion papers, your Honor.

25 Q And that's contained within Government's

Exhibit 9.

Do you recollect how long that call was from the inception to the end?

A It could have been five minutes, it could have been up to eight, ten minutes. I don't know.

Q Now, did you know that Joseph Della Valle at that time was not called Johnny Hooks or Leo?

A Well, it never entered the picture, right. That's the first time I heard the name Johnny Hooks, not Leo.

Q Capra eventually. Is that correct?

A Yes, John Capra.

Q Now, after that phone call you did some surveillance?

A That is correct.

Q And the surveillance led you up to Ray's Stationery Store or the store next to Ray's Stationery Store.

A Yes. I thought it was a meat market. It was a social club.

Q As a result of that phone call and surveillance you learned about my client, John Capra?

A Eventually, yes.

Q As a result of that you learned about a



1  
2 nickname John Hooks?

3 A Yes, that was in the conversation.

4 Q And that conversation of John Hooks led you  
5 to John Capra, is that correct?

6 A That's right.

7 MR. FEFFER: Objection, your Honor. What  
8 does "led to" mean in this context?

9 THE COURT: He said that is right. He must  
10 understand what he means.

11 Q You observed at Ray's Stationery Mr. Della  
12 Cava take a package from the trunk of a Lincoln, is that  
13 correct?

14 A That is correct.

15 Q Did you determine to whom that Lincoln belonged?

16 A Yes, I did.

17 Q Who did that car belong to?

18 A Anthony Barbagallo.

19 Q Was that the first time you had seen that  
20 automobile?

21 A I think so, yes.

22 Q Do you know who used that automobile?  
23 Eventually did you learn in the course of your investi-  
24 gation?

25 A Yes, sir, I did.

Q Who was that?

A Information I received was that John Capra uses that automobile.

Q A package that was removed from the trunk of the Lincoln, did you notice whether it was wrapped in Christmas wrapping?

A No, it wasn't.

Q What was it wrapped in?

A Brown paper.

Q Was it your feeling at the time that you were observing the transfer of narcotics?

A That is correct.

Q And you didn't arrest Mr. Della Cava holding the brown package?

A That's also correct.

Q Detective Eaton, you never indicated to any Court -- withdrawn.

You didn't indicate to Judge Birns on December 8, 1971, that you had difficulty understanding or hearing or knowing the voice of Joseph Della Valle, did you?

A I don't know if I did or not. I'm not sure.

MR. SLOTNICK: May we have Exhibit 1A?

M R. FEFFER: Yes.

(Hanging)

1                   Q       I show you Exhibit 1 and ask you to review  
2                   your affidavit and indicate to me whether you ever  
3                   indicated --  
4

5                   THE COURT:   No, no, I don't want him to do  
6                   that.   Next question.

7                   MR. SLOTNICK:   Your Honor, I have no idea  
8                   that the witness is going to come here completely unpre-  
9                   pared having not read the affidavit.

10                  THE COURT:   He is not completely unprepared.  
11                  The affidavit is before me.   If you want to tell me  
12                  what it says or doesn't say, it's in evidence, you may tell  
13                  me.       I don't need him to go read it through and do that.

14                  MR. SLOTNICK:       May we have a side bar, your  
15                  Honor?

16                  THE COURT:   No.   Ask another question.  
17                  Let's proceed.

18                  Q       The affidavit contained in Exhibit 1A, who  
19                  was that prepared by?

20                  A       My affidavit?

21                  Q       Yes.

22                  A       Myself and Assistant District Attorney  
23                  Cliffrord Fishman,

24                  Q       Who worked out the wording of that affidavit?

25                  A       I guess we both did.

rdr46

Eaton-cross

1  
2  
3 Q At any time do you ever recollect indicating  
4 in an affidavit that you had difficulty in hearing the  
5 voice of Joseph Della Valle during October and November of  
6 1971?

7 A No, because I didn't think I would have that  
8 much difficulty.

9 Q Well, isn't it a matter of fact when you met  
10 in November with District Attorneys Fishman and Kaufman  
11 you told them you had difficulty with the voice of  
12 Joseph Della Valle?

13 A I said I might have difficulty identifying  
14 his voice but that "might" was the same as I might be  
15 able to. I brought it up because we had a round  
16 robin on all the problems that could arise.

17 Q Isn't it a matter of fact that you testified  
18 earlier that you had difficulty hearing the voice of  
19 Joseph Della Valle and might have difficulty listening  
20 to it again and identifying it?

21 A That is correct, I did say that.

22 Q You told this to the district attorneys?

23 A I did, right.

24 Q You didn't put it in your affidavit?

25 MR. PEPPER: Objections, your Honor. Again  
the affidavit speaks for itself.

rdr47

Eaton-cross

THE COURT: I think so.

Q Then it's a fair inference that at no time was that statement ever placed into any papers drafted for the purpose of obtaining the eavesdropping warrant?

A I don't think it was placed in any of the affidavits, that is correct.

Q Was this the first affidavit you ever placed before a Court in obtaining an eavesdropping warrant?

A No.

Q On how many prior occasions had you so done?

MR. FEFFER: Objection, your Honor.

THE COURT: What is the relevance of that?

MR. SLOTNICK: He knows the procedures that he is to divulge to the judge all of the facts at his hand.

THE COURT: Objection sustained.

Q As a matter of fact, in Diane's Bar, Exhibit, I guess, 2, are you familiar with your affidavit or the affidavit you placed before the Court?

A Somewhat, yes.

Q Is there anything in that affidavit -- withdrawn.

Did you place before the Court any statement about the fact that you had difficulty discerning the voice of Joseph Della Valle as a result of your initial.

1  
2 conversation or listening to your initial conversation  
3 with him and your informer?

4 A I don't know.

5 Q Now, Detective Eaton, there came a time  
6 when the wiretap was installed at premises 2034 Second  
7 Avenue, is that correct?

8 A Yes.

9 Q And it was pursuant to your applications to  
10 Mr. Justice Birns, is that correct?

11 A Yes.

12 Q And you were given a copy of the warrant, is  
13 that correct?

14 A That is correct.

15 Q And you read it?

16 A That is correct.

17 Q And your affidavit was sworn to, is that  
18 correct?

19 A That is correct.

20 Q And at the time that this was installed at  
21 2034 Second Avenue, on your September of '71 investigation,  
22 you had never heard of the bar and grill at 2034 Second  
23 Avenue, is that correct?

24 A Never heard of the bar?

25 Q Yes, at 2034 Second Avenue.

rdr49

Eaton-cross

A No, I heard of the bar.

Q That bar and grill. Had you ever heard of the name of an individual Beansy?

A Not that I could recall.

Q Isn't it a matter of fact that you had been part of an ongoing investigation with regard to narcotics in East Harlem for the year of 1971?

A No, that's not the fact.

Q Well, at least since June of 1971.

A I worked in East Harlem, yes.

Q And isn't it a matter of fact from June of '71 you heard the name Beansy prior to December of 1971 as being Stephen Della Cava?

A No, I had heard the name on a wiretap but it was insignificant at the time.

Q Was that the Cucciniello wiretap?

A That is right.

Q Isn't it true, officer, you just testified that you had not heard the name Beansy before?

A I said I didn't recall it. When I worked on this Diane's Bar there was a conversation intercepted between this male, Beans, who it turned out to be, and Michael Santangelo where they referred to Nicky and Patty. When I heard that conversation when I played it

1  
2 back, I started doing a little research and I found out  
3 this was -- this is the guy that had been mentioned on the  
4 social club.

5 Q The name Steven Della Cava, S-t-e-v-e-n,  
6 appears on the top of the amendment. Do you know how  
7 the district attorney got the spelling of Steven?

8 A I gave it to him.

9 Q Where did you get that spelling from?

10 A From the B sheet, I guess, the yellow sheet.

11 Q Isn't it a matter of fact you learned of the  
12 identity of Stephen Della Cava by looking at his license  
13 plate number?

14 A The name, the first night I saw him from the  
15 license plate number but you don't stop there. You get  
16 the B number if possible.

17 Q The license number and the police sheet  
18 spelled his name S-t-e-p-h-e-n?

19 A I believe they did but I'm not sure.

20 MR. SLOTNICK: May I have these marked as  
21 exhibits?

22 (Defendants' Exhibits E1 and E2 were marked  
23 for identification)

24 Q Had you to your knowledge ever seen the name  
25 Steven Dell a Cava, spelled S-t-e-v-e-n, prior to his



1 rdr51

Eaton-cross

2 appearing in the caption of the new order?

3 A I don't recall.

4 Q Detective Eaton, I ask you to look at page 141  
5 of Defendants' Exhibit E for identification and ask  
6 whether this is your handwriting?

7 A Yes, it is.

8 Q That's your handwriting?

9 A Yes.

10 Q Do you recognize what that is?

11 A It's a log of the Cucciniello wiretap.

12 Q What's the date on that log?

13 A July 16, and somebody wrote in red pencil '71,  
14 so it's probably '71.

15 Q Under 1730 is that your handwriting?

16 A Are you referring to 1930?

17 Q 1730; the notation under 1730.

18 A There is a 1930 with an asterisk.

19 Q Forget about that, 1730.

20 A I don't see any for 1730. Will you show it  
21 to me?

22 Q Looking at page 140. Is that your handwriting?

23 A Yes, it is.

24 Q Is there a notation under 1730?

25 A Yes.

rdr52

Eaton-cross

1 Q What is the date of the conversation?

2 A July 16, 1971.

3 Q Would you read the transcript of the conver-  
4 sation at 1730?

5 A Yes. In is Mike, out is Nickie. Is this  
6 Nickie Cucciniello?

7 Q Yes.

8 A Out, hello, Mike, this is Nickie. In, yeah.  
9 Do you want to come over and eat? In, eat where? Out,  
10 by Beansy.

11 "In, I just came from the dentist. I can't  
12 eat.

13 "Out, Marrone, not even macaroni?

14 "In, nothing until about two hours.

15 "Out, Ain't this something?

16 "In, who's over there?

17 "Out, Caesar, Paddy.

18 "In, Hey, Jimmy, you want to go and eat?

19 You want to go and eat? Beansie there having macaroni,  
20 Beansy's. Nickie Red says he can't either.

21 "Out, because he's got to take care of  
22 business. Tell 42 and Patsy Borrelli.

23 "In, 42, you want to go? Hey, Pat, do you  
24 want to go Beansy's and eat? 42 might come over.  
25

rdr53

Eaton-cross

"Out, he's probably, if you come and pick on something or maybe come and have a couple of drinks. We wouldn't be eating for another 45 minutes anyway."

Q The conversation goes on and on, is that correct?

A That is correct.

Q You were recording and transcribing these individuals because they were the subject of a wiretap that was rather important to you?

MR. FEEFFER: Objection, your Honor, as to what he was doing, the reason for it. It's another wiretap completely. I don't see the relevancy of this except possibly whether he knew the name Beansy from that conversation.

THE COURT: Well, I'll allow it.

A Could you repeat the question, please.

Q I can rephrase it.

You were listening to individuals that were part of a narcotics investigation, is that correct?

A That is correct.

Q And they were indicating they were going to Beansy, is that correct?

A They indicated they were going to eat at Beansy's.

1 rdr54

Eaton-cross

2 Q And at 1930, in your handwriting, what is the  
3 indication?

4 A "In, Jimmie, Phyllis to Jimmie, Phyllis tells  
5 her Nicky is at Beansy's."

6 Q Who is Nicky?

7 A Cucciniello.

8 Q Phyllis?

9 A His wife.

10 Q Wasn't he the subject of that wiretap order  
11 in that investigation?

12 A That is right.

13 Q Did you ever make an effort to find out  
14 where Beansy's was?

15 A I don't know if I knew or didn't know.

16 Q As a matter of fact, doesn't the name  
17 Beansy come up during the course of the Cucciniello wire-  
18 tap at least ten times?

19 A People go in there to eat, right.

20 Q And as a matter of fact, isn't there a  
21 notation in the Cucciniello wiretap, "Beansy, 2034 Second  
22 Avenue, Steven Della Cava, S-t-e-v-e-n"?

23 A Where is that?

24 Q Do you remember that?

25 A I don't remember it. It's possible, though.

rdr55

Eaton-cross

He was not the subject of our investigation. Our activities centered around Cucciniello and Patrick Vecchio.

Q Didn't you learn as a result of those wire taps they were very friendly with a man by the name of Beansy? As a matter of fact, didn't you monitor Beansy's phone calls to Nicky Cucciniello at that time, yes or no?

A As an incoming call, that's quite possible.

Q Didn't you testify this morning that you had never heard the name Beansy before?

A I testified that I became aware of the connections, and this brought me back to certain things that happened on the Cucciniello wiretap. I think that's what I said.

Q I show you the same exhibit dated July 8, 1972. (handing) I ask you to read the notation under 2200.

A It says "Plant closed and to vicinity of 2034 Second Avenue, Beansy's."

MR. SLOTNICK: I'm sorry, your Honor, the record should indicate that's July of 1971.

Q Is that correct?

A If it's on those notes, correct.

Q Well, don't you know when you heard Cucciniello's wiretap?

1  
2 A I said it's on those notes.

3 Q I show you Exhibit E1 for identification  
4 and ask whether you can read the notation under 2200.

5 A I can read it. It has the names --

6 Q I'm sorry, 2215, the phone call.

7 A "Danny, Beansy looking for Big Paddy. Not  
8 there, Nicky Red, Steven Della Cava."

9 Q How is Steven Della Cava spelled?

10 A S-t-e-v-e-n.

11 Q The same way it's spelled in the order, is  
12 that correct?

13 A I don't know.

14 Q Well, it speaks for itself.

15 At 2215 for this conversation are there  
16 stars, 1, 2, 3, 4, 5, 6, 7 asterisks next to it?

17 A Yes, I think that's what they are, yes.

18 MR. SLOTNICK: That's July 8, 1971.

19 MR. FEFFER: May I see the last sheet that was  
20 shown to the witness?

21 MR. SLOTNICK: Absolutely.

22 THE COURT: Look, we are going to have to  
23 stop.

24 Mr. Slotnick, you have been going since  
25 11:45. I assume you are approaching the end of this

cross-examination?

MR. SLOTNICK: I believe so, your Honor.

THE COURT: How much longer do you think you need?

MR. SLOTNICK: Another hour, hour and a half.

THE COURT: Do you really need that much?

MR. SLOTNICK: I think so, your Honor.

THE COURT: All right. I'm Jewish, gentlemen, and I think some of the lawyers are, and I like to observe the important Jewish holidays. I think we will not be able to this year at the rate this is going.

Now, if anybody has an urgent problem on that score, you better let me know about it tomorrow. But barring that kind of problem we are going to have to sit on the holidays, judging by the pace at which we are hurtling through this matter. So if I don't hear anything tomorrow you just plan to sit through the next week until we are through, much to my regret.

10:10.

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2 UNITED STATES OF AMERICA  
3 v.  
4 JOHN CAPRA, et al.

5 September 24, 1973,  
6 10 A.M.

7 (Hearing resumed)

8 MR. FEFFER: Government Exhibit 4 was the case  
9 file. I marked certain papers and they are Xeroxed and I  
10 passed them on this morning to defense counsel. I will mark  
11 one set as Government Exhibit 3502 for identification.

12 (Government Exhibit 3502 marked for identification.)

13 THE COURT: All right. You have given them to  
14 defense counsel?

15 MR. FEFFER: That is correct, your Honor.

16 THE COURT: In my spare time over the weekend I  
17 happened to think a little bit about a prior question that  
18 we dealt with, the question or statement of the defendant  
19 Capra made while locked in that cell on West 57th Street,  
20 or allegedly made.

21 I think probably I made a mistake in running as  
22 long a Miranda hearing as I did. I think I had some help  
23 making that mistake but I take the ultimate responsibility.

24 I think the essential irrelevance of the Miranda  
25 considerations led me to a position that now seems to me to



1 arh 2

2 be erroneous. That is to say I still think Miranda has  
3 substantially nothing to do with the problem but I have now  
4 been alerted more pointedly, particularly by the motion  
5 papers of Mr. Levenson to a problem that was in fact brought  
6 to my attention but not as vividly as was necessary in my  
7 weakened condition and that, of course, is the problem of  
8 the Bruton case.

9 On further reflection I think I ought to tell you  
10 where I stand from time to time. I am now changing the  
11 ruling and I am holding that that statement will be excluded.  
12 I am balancing in doing that the danger of prejudice in all  
13 the circumstances against what appears to me to be at best  
14 a somewhat attenuated probative value of that statement.

15 Again, in fairness to defense counsel at least,  
16 I think it should be said these points were indeed made in  
17 the argument and I think I did not weigh them correctly.

18 Now, since in case anybody has any doubt about  
19 it I tend sometimes to vacillate, it should be said that if  
20 the government can make an overpowering demonstration that  
21 I am wrong this time, I will listen. But I think for the  
22 guidance of all I should tell you where I stand on this  
23 and if the government wants to write a smashing memorandum  
24 within the next week or so, you may. I would hope you have  
25 better things to do because if your case depended heavily

1 arh 3.

2 on that statement, you are in big trouble I would think but,  
3 anyhow, for your guidance since this has all been done  
4 orally as I recall, so that you will know where we are at,  
5 the ruling now is that that testimony about a reported state-  
6 ment will not be received.

7 One of the things that could make me reconsider  
8 would be if the government wanted a severance as against  
9 the defendant Capra. I imagine the answer to that is no but  
10 in any event you now know everything I think about that and  
11 I think we should proceed with Detective Eaton.

12 MR. SLOWICK: Your Honor, I have one further thing  
13 to go into. We left with your indicating that it was intended  
14 we work on Thursday and Friday and left it for that morning.  
15 I had not thought about it yesterday and I couldn't press  
16 it yesterday. However, it was Sunday and it was late. Since  
17 your Honor allowed us to today, at this point I would like  
18 to indicate to your Honor that all of my life I have not  
19 worked on the holidays that are about to come, Thursday,  
20 Friday and Saturday and, naturally, Yom Kippur which is the  
21 real high holiday in my own religious concept.

22 THE COURT: Okay, if that is your position then  
23 I am not going to work. You may even have a first amendment  
24 right.

25 I would like to ask you in return to make a more

strenuous effort than I believe defense counsel have been making thus far to shorten the proceedings on this minimization hearing.

With all due respect for your ability and your ingenuity the cross-examination has been arduous to sit through. It has been repetitious and argumentative and it has been a jury type cross-examination and there is no jury here. I know that I am dealing with counsel who are able to do better. I strongly urge you to do better whether or not government counsel jump up and down objecting.

There were over four, perhaps five hours of cross-examination yesterday that should have taken at fairest a fast hour. I want you to do better. I don't know of any way to make you do better except to urge you to address your attention to this need and let us see if we can finish this hearing by Wednesday. This is a pre-trial hearing and this case may still have to be tried and if the courts are going to be confronted with this kind of hearing we are not only going to have to work Sundays but on every high holiday and we still won't get done.

Detective George Eaton will take the stand and Mr. Slotnick will proceed.

MR. SLOINICK: Before I continue there is one point we were addressing ourselves to at this stage of the proceeding

in my opinion and it is very sound and an important legal point.

I have submitted to the court some hundred pages of affidavits and memorandum which hopefully the court has read and is familiar with and you can see why I have gone through this arduous cross-examination.

I think in reflection, in the Segal matter or hearing it ran over three months, your Honor, and ultimately the Court of Appeals found that this time was not objectionable and rather useful when it came down with a landmark decision. Perhaps that is what I am doing here and perhaps your Honor feels that I am over-extending it but I feel this point is so important.

THE COURT: Which point?

MR. SLOTNICK: The fourth amendment proposition which I am attacking through the use of a minimization hearing. I feel it is important and it is necessary that I make an extensive record and do probe and if your Honor feels it is prolonged, the reason I am doing it is I am attempting to establish a record to indicate what I have indicated in our papers.

THE COURT: I am glad you did respond, Mr. Slotnick, because I have no way of knowing but all of us realizes the possibility of this record going before the Court of Appeals.

Therefore, I would hope that the Court of Appeals when and if this record is before it, will address itself directly to the criticism I just made of you in the light of the admitted grave substantial concerns under the United States Constitution with which we are engaged.

What I said to you without minimizing, if I may coin a word, the importance of the fourth amendment was that your cross-examination was unduly and unwarrantedly protracted, argumentative, repetitious and time consuming.

THE COURT: Now, I would like for the Court of Appeals to help us in trial courts one way or another, if it has the time, and if you find occasion to bring this to the court's attention, by saying whether that criticism of you in this case was unfair and unjustified. I have indeed on this job occasionally good intentions notwithstanding done and said things that were incorrect, and even unfair and unjustified. I did not mean to be doing that when I said what I said.

Now, I hope that for the guidance of the bar and bench we can get some help in dealing with these questions when we have to hold pre-trial evidentiary hearings without juries and have the weight of authoritative judgments of our appellate courts directed to this question of how far counsel should be allowed to go in extending proceedings of

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Eaton-cross

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2 this kind and in failing to recognize that a trial judge  
3 in theory at least can understand sometimes when he hears  
4 things once or twice and doesn't need to have it belabored  
5 and pounded in argumentative cross-examination at great length.  
6 That is all I meant to be talking about and I recognize that  
7 I may be wrong.

8 MR. SLOTNICK: I think that guidance for the bar  
9 and bench would be helpful at this point, at this stage.

10  
11 G E O R G E E A T O N, resumed and testified further as  
12 follows:

13 CROSS-EXAMINATION CONTINUED

14 BY MR. SLOTNICK:

15 Q Are you familiar with the fact that the New York  
16 City Police Department has an alias file?

17 A Yes.

18 Q Were you familiar with that fact during December  
19 of 1971?

20 A Probably.

21 Q What in your own words is an alias file?

22 A It would be an alias used by known criminals, a  
23 file of their alias names that they use.

24 Q For example, the name Beans, Fat Beans or Beansy  
25 would be in the alias file?

1 A It might be.

2 Q Didn't you later discover the name Beans, Fat Beans  
3 and Beansy were in that file?

4 A I don't know if I learned it that way or through  
5 the license plate number, backwards, his yellow sheet.

6 Q But in retrospect now you realize that at that  
7 time had you looked at the alias file of the New York City  
8 Police Department you would have uncovered the fact that  
9 Beans, Fat Beans and Beansy were an alias of one Stephen  
10 Dellacava, 2034 Second Avenue?

11 A That is possible; I don't know.

12 Q Does his yellow sheet as you reflect back, meaning  
13 his police record now reflecting back, that he used the  
14 nickname Beans, Fat Beans and Beansy?

15 A It does but I have no way of knowing if every  
16 alias is in the nickname file.

17 Q But you didn't go to the alias file?

18 A No.

19 Q You found the alias written on the yellow sheet?

20 A I believe so, yes.

21 Q You also know that Blacky as an alias would have  
22 been in the file had there been a criminal who used the name  
23 Blacky?

24 A I can only say probably, yes.

1 arh9

Eaton-cross

2 Q You didn't go to the alias file for that either?

3 A No, I did not.

4 Q After Dellacava and Guarino were arrested on  
5 February 2nd or 3rd you called the bar, is that correct, on  
6 a couple of occasions, meaning Diane's Bar, 2034 Second  
7 Avenue?

8 A On the 4th of February, yes.

9 Q Your fellow police officers called the bar?

10 A I think so, yes.

11 Q Did the phone ring?

12 A I believe it did.

13 Q Had you ever called the bar prior to the -- had  
14 you ever called the bar at any time prior?

15 A Personally?

16 Q Personally.

17 A I don't think so.

18 Q Had you ever entered the bar prior to February 2,  
19 1972?

20 A No, I was only in the vicinity of the bar.

21 Q Had any of your fellow officers ever entered the  
22 bar prior to February 2, 1972?

23 A I am not sure about that.

24 Q You are not sure about that?

25 A I am not sure.



1 Q That is a possibility though?

2 A Yes.

3 Q You were not informed if that did happen?

4 A I may have been, I don't recall anybody going in  
5 the bar.

6 Q Were you informed of that fact or not?

7 A I don't recall.

8 Q You don't remember?

9 A That's right.

10 Q Prior to December of 1971 had you ever heard of  
11 John Capra?

12 A No.

13 Q The first time was the overhear on December 23rd  
14 call?

15 A That's right.

16 Q As a result of the overhearing of the conversation  
17 on December 23, 1971, what did you do?

18 A I eventually followed Stephen Dellacava to the  
19 location in the Bronx, on Westchester Avenue.

20 Q Who was in the plant with you, if you remember?

21 A Patrolman Martiar and Detective Roche, I believe.  
22 I think that is who was there?

23 Q Did you say something to them as a result of  
24 overhearing this conversation?  
25

1 arh 11

Eaton-cross

2 A Most likely, yes.

3 Q Do you recall what you said to them? Do you have  
4 any recollection?

5 A No.

6 Q But you know whatever happened as a result of  
7 that conversation, you left the plant?

8 A That is correct.

9 Q You left the plant to do what?

10 A To set up surveillance on the bar.

11 Q After leaving the plant how long was it until you  
12 first spotted Stephen Dellacava?

13 A I think I left the plant twice. I went out there--  
14 I am not sure, I think about 8:30 or 40, somewhere around  
15 that time it was. I am not sure.

16 Q What did you do?

17 A I just watched the place to see if anybody came out.

18 Q Did anybody come out?

19 A A few people did but everybody that I saw walked  
20 away. I went back to the plant and around 9 o'clock I went  
21 back to the bar again.

22 Q What did you see then?

23 A I saw Joseph Della Valle circle the block. On  
24 the fourth time he double parked in front of the bar and  
25 waved to somebody inside.

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Eaton-cross

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Q Do you know who he waved to?

A No.

Q What happened then?

A About three minutes after that Stephen Dellacava came out of the bar.

Q Exited?

A Yes.

Q He entered the car?

A Yes.

Q And drove some place?

A To the Bronx, yes.

Q You followed him?

A Yes.

Q How did you know it was Stephen Dellacava?

A We didn't.

Q You just followed the first man that exited the bar?

A No.

Q The second man?

A We followed a few people and they didn't seem to be going up there, wherever that was.

Q Who is we?

A I think Roche and myself.

Q Every time somebody left the bar you followed them?

1  
2 A If they got in an automobile we took them a few  
3 blocks and if they didn't seem to be going anywhere we came  
4 back.

5 Q Didn't you know Stephen Dellacava was going up  
6 there, is that correct?

7 A Somebody was going up, I think to the Bronx.  
8 That is my opinion.

9 Q But the conversation was "Up there"?

10 A That is correct.

11 Q Therefore, you were going to follow somebody going  
12 up there?

13 A That's correct.

14 Q To your mind?

15 A Yes.

16 Q You followed them as they left the bar?

17 A Yes.

18 Q And the first man who walked out and headed for  
19 the Bronx was Stephen Dellacava?

20 A We kind of linked it to the actions of Joseph  
21 Della Valle.

22 Q After Joseph Della Valle waved weren't there people  
23 that walked out of the bar during that two-minute interval?

24 A No, there weren't.

25 Q No one whatsoever?

1  
2 A No.

b3 3 Q Isn't it true you followed other people out of  
4 the bar to see if they were going up there?

5 A Intermittently, that is prior to Della Valle --

6 Q That is people walked out of the bar and you  
7 followed them, yes or no?

8 A We followed them or watched them.

9 Q Or you watched them?

10 A Yes.

11 Q There came a time when you lost interest in them?

12 A That is correct.

13 Q Because everybody was going downtown or crosstown?

14 A Just walked away from the bar.

15 Q Did people enter an automobile if you remember?

16 A I think one person did.

17 Q Do you recall whether he went downtown?

18 A I think so.

19 Q That is why you didn't follow him?

20 A That is correct.

21 Q The first man to enter an automobile and go uptown  
22 was --

23 A It was Stephen Dellacava and we connected that  
24 with the actions of Joseph Della Valle which I thought was  
25 a co-conspirator.

Q Which resulted from a phone conversation you had overheard that afternoon?

A That is correct.-- or that evening.

Q In fact, that is why you were there, because someone on the phone said he is going up there or to come up there or--

MR. FEFFER: Objection, that was asked and answered about four or five times.

THE COURT: Yes.

MR. SLOTNICK: I am sorry, your Honor.

Q You followed Mr. Dellacava?

A Yes, we did.

Q At the time you were following Mr. Dellacava, was there anybody else left at the bar to watch anybody else going up there or uptown?

A I think Detective Roche waited in the area of the bar.

Q Do you know whether he followed anybody uptown?

A Eventually he did come up.

Q Come up to see you?

A When we were near the Triboro Bridge.

Q As a result of your radio call?

A Yes

Q He didn't follow anybody, did he?

A He joined us in following this male driving up to the

Bronx.

Q Who you believed was going up there?

A Yes.

Q The male suspect turned out to be Stephen Dellacava?

A That is right.

Q The man who you allege you had never seen before,  
is that correct?

A I might have seen him but I didn't know who he was.

Q Now, where did he go?

A He went to the vicinity of 3205 Westchester Avenue,  
went in 3203.

Q In the vicinity of Ray's Stationery and next door  
to which turned out to be --

A A social club.

Q You commenced as a result of that an investigation  
of the social club, is that correct?

A Yes, basically.

Q You also commenced an investigation of Ray's  
Stationery?

MR. FEFFER: Objection, your Honor. What subsequent  
investigation followed?

MR. SLOTNICK: That is my whole fourth amendment trial.

THE COURT: That doesn't help me. Objection sustained.

You have to give me some more pointed guidance than

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Eaton-cross

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some poetical reference to your whole fourth amendment trial.

MR. SLOTNICK: I thought the court understood why I was doing it. I was attempting to trace the taint from the December 23rd phone call, and as a result of that I am taking this officer through the activities of that day which resulted in the phone call. I think his testimony is clear that he followed Stephen Dellacava, that he went some place and I want to know what he did after that, all relating back to the phone call. That is the reason I am on this, as your Honor called it, tangent.

THE COURT: As to taint, I thought I indicated I was going to consider that at a much later time because I don't know what evidence the government proposes to adduce at the trial. If I order the fruits of this wiretap suppressed I think the ball is then in the government's court and it is the government's obligation to see that none of the fruits obtained directly or indirectly as a result of that illicit eavesdropping is used at the trial, but I don't know that we have to pursue that now. If I am wrong in that please mention to me why.

MR. SLOTNICK: Well, if your Honor does not suppress and your Honor is wrong in doing that, then we have a problem back in the Court of Appeals and I hoped at least to establish a part record now where it wouldn't be necessary, if it does



happen to send it back down here.

THE COURT: I assume it is going to be reversible error if I fail to suppress this wiretap and it should have been suppressed. Mr. Feffer may be of some enlightenment on this but I would hope I am not sitting long days and Sundays on something that is liable to be an academic question.

Mr. Feffer, do you plan to use any evidence resulting from this wiretap so if I admit it erroneously you would agree it would be reversible error?

MR. FEFFER: It would be close. We definitely plan to use the arrest on February 3rd, the money --

THE COURT: I think that if that is reversible error in overruling your minimization contention, Mr. Slotnick, we can all fairly predict as lawyers that the Court of Appeals at a minimum is going to send the case back to hear taint and all kinds of other things. Therefore, I don't see any reason to anticipate that now and trail all the way through the remote direct or indirect consequences of these taps. So on the grounds I tried to outline for you in the past, I want you to limit this hearing to the subject of minimization as it affects the question whether the evidence from these taps ought to be suppressed.

MR. SLOTNICK: Your Honor has cut away a great deal of my cross-examination by his comments. The only last thing

2 I care to indicate, your Honor indicates that your Honor  
3 recognizes minimization as a fourth amendment proposition.  
4 I think the word your Honor used a few days ago is this is  
5 really a suppression hearing.

6 THE COURT: If I used a clumsy phrase like that  
7 I would rather it be forgotten than used against me but go  
8 ahead.

9 MR. SLOTNICK: In using this clumsy phrase we were  
10 in agreement.

11 THE COURT: Please proceed.

12 BY MR. SLOTNICK:

13 Q I show you Exhibit 1C in evidence and I also show  
14 you 1B in evidence. I ask you to turn to December 19, 1971,  
15 in the Third Avenue log and also to December 19, 1971, in the  
16 Diane's Bar log.

17 A Yes, I have them.

18 Q You are familiar with the Third Avenue log since  
19 you testified before, is that correct?

20 A Yes, I know this Third Avenue log.

21 Q Would you read and indicate to us during what period  
22 of time on December 19th in the Bronx Joseph Della Valle was  
23 on the phone?

24 A 1400, 1430.

25 Q That is 2 o'clock, 2:30?

arh20

Eaton-cross

1 A That is 2:30 and 3:30.

2 Q And at 3:30?

3 A Yes.

4 Q Then the plant closed down? No, it continued.

5 Now, do you remember what time you allege that  
6 you overheard Joseph Della Valle in the bar on December 19th?

7 A At 2:59 P.M.

8 Q What time?

9 A 2:59 P.M.

10 Q That is the allegation you made in your affidavit  
11 that you gave to Judge Birns, is that correct?

12 A That is right.

13 Q Thereafter the Third Avenue log indicates that  
14 at 2:59 P.M. Joseph Della Valle was actually at home?

15 A They indicate he was probably at home, yes.

16 Q Didn't you check both logs prior to submitting  
17 your affidavit to Judge Birns?

18 A No, I did not.

19 Q Didn't you have them available to you if you wanted  
20 to look at them?

21 A Actually, counselor, I discovered this the other  
22 day when I looked at these logs for the first time.

23 Q Discovered it the other day but you didn't do it  
24 January 6th, did you?  
25

1  
2 A No, I did not.

3 Q You submitted it to Judge Birns on an erroneous  
4 conclusion, is that correct?

5 A I was mistaken probably in voice identification, yes.

6 Q Are you aware that of the fact that there are other  
7 circumstances which coincide with Joseph Della Valle speaking  
8 on the Third Avenue phone and the Beans conversation in the  
9 bar prior to December 19th?

10 A No, I am not.

11 Q Will you during the lunch hour look at both of these  
12 logs and compare them?

13 MR. PEPPER: Your Honor, may I suggest that if Mr.  
14 Slotnick is aware of some discrepancies he point them out to  
15 the court?

16 THE COURT: Yes. It is a good suggestion.

17 MR. SLOINICK: That is a good suggestion and I have  
18 got to see Detective Eaton over the lunch hour to check out  
19 a certain point to see if I am correct in my interpretation.

20 Q Did you ever receive general instructions from  
21 Lieutenant Hill?

22 A Yes.

23 Q Were they very specific or general instructions?

24 A In reference to monitoring or general investigations?

25 Q In reference to monitoring.

1 A Well, I had been involved in an investigation I  
2 think with Mr. Fishman and I think I got the same instructions  
3 as to how the machine should be monitored. He did ask if  
4 we were running this machine properly on occasion. He did  
5 come up in fact at times and watch us.  
6

7 Q Lieutenant Hill?

8 A Yes, sir.

9 Q Did you have discussions with him about what was  
10 going on during the proceedings, the wiretap proceedings?

11 A This proceeding?

12 Q While you were wiretapping and he came to see you  
13 did he look at the logs and listen to the wire and discuss  
14 what was happening?

15 A When he was in the plant, yes, he was.

16 Q He was also aware of the fact that you weren't  
17 sure what Joseph Della Valle sounded like?

18 A I believe so, yes.

19 Q Was he also aware about your question and your concern  
20 after December 11th?

21 A I believe I mentioned it. The 12th or 13th, whatever  
22 it was.

23 Q The 12th or 13th when you weren't sure who you were  
24 listening to?

25 A That is correct.

arh23

Eaton-cross

1           Q     Do you remember what he said to you?

2           A     No.

3           Q     Do you remember what D.A. Fishman said to you  
4                 or did you discuss this with D.A. Fishman?

5           A     I don't know -- I may have but I don't know if I did.

6           Q     As a matter of fact, isn't it true the first time  
7                 you spoke to D.A. Fishman was after you had this thought in  
8                 your mind on December 20th when you finally realized that,  
9                 as you put it, that you were listening to the wrong person?

10          A     I spoke to Mr. Fishman on the phone a few times.  
11                 I don't know whether I told him this or what was going on  
12                 specifically.

13          Q     You don't remember?

14          A     No, I don't.

15          Q     Of course, in your second affidavit you don't  
16                 discuss or indicate to Judge Birns you had difficulty  
17                 recognizing the voice of Joseph Della Valle, is that correct?

18          A     That is correct.

19                 MR. SLOTNICK: We have received a sheaf of reports  
20                 this morning which I believe were marked as 3502, is that  
21                 correct?

22                 MR. FEFFER: That is correct.

23                 MR. SLOTNICK: Could the detective be given a copy  
24                 of that?

arh24

Eaton-cross

Q The top report, you know who that was written by and executed? Look at the second page, it bears two signatures.

A Lieutenant John Hill.

Q Also James M. McGoe?y?

A He put an endorsement on it, yes.

Q Lieutenant John Hill drew up this report, the first report, 3502 on what appears to be February 5, 1972, is that correct?

A Yes.

Q How does he spell Stephen Dellacava? Just the first name.

A S-t-e-p-h-e-n.

Q It says subject Stephen number 32295?

A Yes.

Q Paragraph 2 how is Stephen Dellacava spelled?

A S-t-e-p-h-e-n.

Q Let us turn to page 3 of 3502 -- did you type up this listing?

A Yes, I did.

Q You did. How was Stephen Dellacava spelled?

A S-t-e-v-e-n.

Q On December 11th it says Stephen Dellacava, S-t-e-v-e-n?

A That is correct.

1           Q     That is your spelling?

2           A     That is correct, but prepared after the case was over.  
3  
4     This extra list was made up when we could figure out how it  
5     first appeared.

6           Q     You took the spelling of the first name off the  
7     top of the order?

8           A     I don't know where I took the name from.

9           Q     As a matter of fact you spelled Stephen,  
10    S-t-e-v-e-n all the way through this case?

11          A     No, I don't think so.

12          Q     Didn't you testify yesterday that you gave us the  
13    spelling from the top of the order?

14          A     You asked me to spell it --

15          Q     Didn't you give this spelling to D.A. Fishman from  
16    the top of the order, isn't that what you testified to yesterday?

17          A     I gave him the information.

18          Q     But when you gave him the information didn't you  
19    give him the spelling S-t-e-v-e-n?

20          A     I don't know.

21          Q     You remembered it yesterday, didn't you?

22          A     I said that is how it appeared. You asked me to  
23    spell it and I spelled it for you.

24          Q     The record will be very clear on that.

25                I take it that the rest of these papers that I



have were all made out after the case?

A That is correct.

Q We turn to James McGoey's report of February 4, 1972.

A Yes, sir, the first report you are referring to?

Q The second report after your typing.

A Yes.

Q He spelled it S-t-e-p-h-e-n Dellacava?

A That is correct.

Counselor, may I correct something here? I supplied these papers with the names for these reports.

Q You did?

A Yes, I did.

Q Now, the next listing is a typewritten listing and it is typed in Stephen Dellacava, Beansy, Fat Beans?

A Probably did, yes.

Q You probably did. Secretly owns Diane's Bar, did you type that in?

A Most likely, yes.

Q Stephen is S-t-e-v-e-n?

A That is correct.

Q We have another sheaf of papers indicating when you were on duty which I have not had an opportunity to look at and I will leave that to my brother counsel.

MR. SLOINICK: May we have these four sheets of paper marked as Defendants' Exhibits for identification?

(Defendants' Exhibits F, G, H and I marked for identification.)

Q Detective Eaton, I show you Defendants' Exhibit H for identification and ask you whether this is your handwriting.

A I am not sure. It doesn't look like mine.

Q Do you recognize it?

A Not really, no.

Q What about the second writing on this, is that in your handwriting?

A No.

Q What about the rest of it?

A It is not mine.

Q Do you recognize what Defendants' Exhibit H for identification means? Does it mean anything to you?

A No, it doesn't.

Q Does wiretap reel 21 mean anything?

A Yes.

Q What does that mean?

A The wiretap on the social club on Second Avenue.

Q The Cuccidello wiretap that we discussed yesterday?

A Yes.

arh28

Eaton-cross

1 arh28  
2 Q Isn't this a copy of the transcripts of the  
3 Cucciniello wiretap?

4 A I don't know, it could be.

5 Q Doesn't it appear to be?

6 A I didn't type it up. It appears to be.

7 Q Doesn't it appear to be a conversation between  
8 Joseph Della Valle and a man referred to as Beans?

9 A That is correct.

10 Q And isn't it dated July 10, 1971?

11 A That is correct.

12 Q Isn't it a call put in to 722-9595?

13 A It is scratched out and written in, yes.

14 Q If it came that way and I didn't do this would that  
15 be impressive enough to be a call to Diane's Bar and Grill?

16 A That is correct. But that is not mine.

17 MR. FEFFER: May I look at the exhibit?

18 MR. SLOTNICK: Of course.

19 MR. FEFFER: I would ask to have a representation  
20 as to where it came from.

21 THE COURT: It is not offered in evidence. Why don't  
22 we just wait a while?

23 Q Who were the detectives that were working on the  
24 Cucciniello wiretap at the time?

25 A Finelli, Rizzo, Calabro, Cassa and Cliff.

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Q And Eaton?

A Myself.

Q Were you familiar with the Cucciniello wiretap?

A Yes, sir.

Q Haven't you testified on a previous occasion in this courthouse with regard to matters surrounding the Cucciniello wiretap?

A Yes.

Q Were you characterized as one of the chief monitoring officers, if you remember?

A I may have been characterized as one, I may have been, yes.

Q Were you or weren't you?

A I was one of the investigators on the case and I had the order for the wiretaps, yes.

Q It was your habit then as now to have read the transcripts and logs and go over the tapes and do everything that you did in this case?

A That is my work.

Q As the Diane wiretap?

A That is correct.

Q Therefore, assuming that Defendants' Exhibit H for identification is a valid piece of paper --

A Yes.

1           Q    -- you would have seen this during the July, 1971,  
2 period, is that correct?  
3

4           MR. PEPPER: Objection, your Honor.

5           THE COURT: Sustained.

6           Q    I show you Defendants' Exhibit F for identification  
7 and ask you whether that is your handwriting.

8           A    No, that is not mine.

9           Q    Do you know whose it is?

10          A    I have the possibility that I know who recognized  
11 this as Della Valle.

12          Q    That recognized this guy?

13          A    He gave me a date yesterday with the name Della  
14 Valle typed on the bottom of the paper.

15          Q    S-t-e-v-e-n?

16          A    I was not working that day but Detective Rizzo  
17 who was assigned to the plant knew several of the people in  
18 that area and he may be the one who did this. He also I  
19 think indicated at one point -- I am not sure -- that he thought  
20 everybody up there was a bookmaker.

21          Q    Is it your contention now that during May, June,  
22 July, August period when you were part of a wiretap team  
23 at the so-called Cucciniello wiretap, that you never overheard  
24 the name Beans on a wiretap or overheard the voice of Beansey  
25 or Stephen Dellacava, is that your contention?

arh31

Eaton-cross

1 A No, it is not my contention. My contention is  
2 I didn't know who he was and if I did it meant nothing to  
3 me because on this occasion we worked on three separate group-  
4 ings and heard 50 or 60 nicknames. I can't remember all these  
5 people.  
6

7 This was the first time I ever worked in East  
8 Harlem. How can I remember or these people.

9 Q Wasn't a chart made up of individuals around  
10 Cucciniello?

11 A Yes.

12 Q Prior to December of 1971?

13 A I don't know. I made up a subsequent chart for  
14 two case folders and put it in both folders.

15 Q Wasn't one made before the wiretap in Diane's Bar  
16 and didn't that one list the name of Beansey on it as Stephen  
17 Della Valle?

18 A I don't know.

19 Q Didn't it show Diane's Bar, 2034 as a hangout?

20 A The circumstances in the Cucciniello or Diane Bar,  
21 Nicky Cucciniello was meeting people there, there were  
22 occasions that he would accept calls there. During this case  
23 that is the substance of what this bar meant to us.

24 Q Isn't it true that -- you recognized the fact that  
25 there was surveillance during June, July and August of 1971

1 arh32

Eaton-cross

2 of 2034 Second Avenue, Diane's Bar?

3 A Pertaining to Nick Cucciniello?

4 Q That is correct, you were one of the surveilling  
5 officers at that time?

6 A I took him there on one occasion, I think.

7 Q Isn't it also true that it was known during that  
8 period of time in the case report in the folder -- withdrawn.

9 That the undisclosed owner was Stephen Dellacava?

10 A I don't know.

11 Q You don't remember?

12 A I don't remember, no.

13 Q Isn't it further true that Nicholas Cucciniello  
14 during this period was in conversation with Stephen Dellacava  
15 on many occasions, as a result of your wiretap of Cucciniello's  
16 place during June, July and August of 1971, if you remember?

17 A He may well have been, yes.

18 Q Isn't it true that as a result of the documents  
19 that I showed you both yesterday and today it refreshes your  
20 recollection?

21 A No, I tried to figure out where the name came from  
22 and I called to see if I was working that day and who was  
23 working, that is what I explained before.

24 Q Isn't it true it refreshes your recollection you  
25 heard the name Benson?

1 arh34

Eaton-cross

1144

2 there is an objection. Sustained.

b6

3 MR. SLOTNICK: All right.

4 BY MR. McALEVY:

5 Q Detective Eaton, how long have you been a member  
6 of the New York City Police Department?

7 A A little over ten years.

8 Q How long have you been a detective?

9 A A little over three years.

10 Q How long have you been a detective assigned to  
11 narcotic investigations?

12 A I have been assigned to narcotics a little over  
13 four years.

14 Q But as detective for all three years?

15 A Yes.

16 Q With respect to the affidavit you presented to  
17 Judge Birns in December, in your affidavit you set forth  
18 the details of the two telephone calls you made to a person  
19 that your confidential informant told you was Joseph  
20 Della Valle?

21 A No, I didn't make the call, no.

22 Q A phone call that you overheard?

23 A Yes.

24 Q I believe you were asked on Mr. Slotnick's  
25 cross-examination as to whether you had a recording device



1           A     I never said I didn't hear the name Beansy. He  
2           did call. How many times, I don't know. But that didn't  
3           mean anything to me.  
4

5           Q     Isn't it true yesterday morning when I asked you  
6           if you ever heard the name Beansy before December, 1971,  
7           you said no?

8           A     You showed me a paper yesterday.

9           Q     Yesterday morning when I asked if you ever heard  
10          the name Beansy before December, 1971, in East Harlem area  
11          and you said no. Isn't that true?

12          A     I don't know.

13          Q     If you said no would that have been a true answer?

14          A     No, it wouldn't be.

15               MR. SLOTHICK: Your witness. I would offer Exhibits  
16          F, G, H and I.

17               MR. PEPPER: Objection, your Honor.

18               THE COURT: Do you say this has been authenticated  
19          and if so how, Mr. Slotnick?

20               MR. SLOTHICK: These are exhibits that were  
21          originated in Mr. ---

22               THE COURT: No ---

23               MR. SLOTHICK: If you want me to put the attorney  
24          on the stand from the government he can look at it.

25               THE COURT: You have to supply authentication if

1 arh35

Eaton-cross

2 with you at that time.

3 A No, I did not.

4 Q You didn't?

5 A No.

6 Q No question about that?

7 A No.

8 Q When the affidavit was prepared to present to  
9 Judge Birns who prepared that particular part of the affidavit  
10 where the phone call and conversation were set forth?

11 A I believe Mr. Fishman prepared basically the entire  
12 affidavit.

13 Q What did you do, give Mr. Fishman with respect  
14 to the conversation between the confidential informant and  
15 the person you thought to be Joseph Della Valle?

16 A Two pieces of yellow legal paper.

17 Q Then I take it when you were in that phone booth--  
18 you were in a phone booth, were you?

19 A I possibly was in a phone booth.

20 Q That is a normal size phone booth?

21 A That is correct.

22 Q You had a yellow pad in the phone booth with you?

23 A No, I did not.

24 Q Where were you writing these things?

25 A After the call was completed we discussed the call

and wrote down what we could remember.

Q So then is it your testimony that you relied on your confidential informant's word with respect to the details of that phone call?

A No, I heard certain things. I listened to the call as he spoke to the guy. My partner listened to what the informant said and the three of us together put it together.

Q You testified that your partner was outside on Lexington Avenue?

A Outside the phone booth. We watched him dial the number also.

Q Did you hear any of the conversation on the phone, the conversation that occurred on your half of the phone?

A Yes.

Q I mean from the other side of the phone?

A No.

Q Not what your informant said.

A No.

Q Are you the only person that heard what the man you understood to be Joseph Della Valle said, are you the only person that heard that or did the informant hear it also?

A He did too.

Q Will you please explain to me how this was possible?

A He just held the phone sideways.

1 arh37

Eaton-cross

2 Q You pushed your head into the booth next to the  
3 apparatus?

4 A We pulled it out as far as it would go and whatever  
5 point that is, that is how we worked it out.

6 Q You were not writing anything down at that time?

7 A No.

8 Q Do you recall how you set forth that conversation  
9 in the affidavit?

10 A Just basically.

11 Q Would you mind telling me why as an experienced police  
12 officer, apparently being familiar with taping apparatus,  
13 that you did not tape that phone call?

14 A It was our policy not to tape phone calls at that  
15 time.

16 Q Did you know at the time there was an apparatus  
17 you could just attach to the phone, to the receiver itself  
18 and pick up an entire conversation?

19 A A plug, yes, I knew that.

20 Q You are telling me now that it wasn't your policy  
21 back in late October, early November of 1971 to do those  
22 things?

23 A I don't think it was anybody's policy. It is not  
24 my policy.

25 Q Wouldn't you have had a perfect right to do that

1 arh38

Eaton-cross

2 as long as you had the permission of this confidential  
3 informant to make a phone call?

4 A I would have.

5 Q You wouldn't have been breaking any laws at that  
6 conversation?

7 A No, I would not.

8 Q But it was not your policy or the Police Department  
9 policy?

10 A I think now it is the policy to record every con-  
11 versation of that nature.

12 Q When you supplied this affidavit to Judge Birns  
13 did you explain him that this conversation as related in  
14 paragraphs 14 and 15 were not actually recorded but just the  
15 best you could recollect?

16 A Yes, sir.

17 Q You did say that?

18 A Yes.

19 Q So therefore when you were speaking to Judge Birns  
20 you had a little -- he asked you some questions?

21 A A few, yes.

22 Q Did you explain to Judge Birns at that time that  
23 you were having difficulty understanding the voice of Joseph  
24 Della Valle?

25 A That I was having difficulty? No.

arh39

Eaton-cross

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Q Why not?

A It didn't arise, the question didn't arise.

Q As a police officer doing his duty you knew that you had to present everything truthfully to the judge that was to sign this warrant, did you not?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Is there any reason for your behavior in informing that to the judge?

MR. FEFFER: Objection.

THE COURT: Sustained.

Q I show you a copy -- I am not sure of the marking of this -- 3502. You have a copy of that?

A Yes.

Q Will you turn to the fourth page from the beginning? That is the page that has the name John Capra on the top?

A That is correct.

Q When was that prepared?

A I think these papers were all prepared after the case was over.

Q You think?

A Yes.

Q Who prepared these papers?

A I did.

arh40

Eaton-cross

Q I direct your attention to the name of Joseph Guarino. Do you see where that is set forth on the page that you prepared?

A Yes, I do.

Q And the address 2657 Harding Avenue in the Bronx?

A That is correct.

Q Who is that person?

A I don't know.

Q You don't know yet you put it down in your own report and didn't even know who it is?

A That indicates this was prepared before the case was over.

Q This was prepared before the case was over?

A Yes.

Q Didn't you just 20 seconds ago say it was prepared after the case?

A That is what I thought. I made up several after the case was over and I should look at them closer.

Q Look at the entire thing closely now, detective, if you need to because I want to ask some questions after this.

A All right.

Q Is it your policy to date papers after you have them typed out?

A If it is a report, yes.

1           Q     Would you consider this a report?

2           A     No.

3           Q     What do you consider this?

4           A     A chart.

5           Q     Under whose direction did you make this chart?

6           A     This is a policy with every case folder you have  
7                 to do something like this.

8           Q     You never date the charts, do you?

9           A     No.

10          Q     Can you tell me now what part of this report was  
11                 prepared before the case was over and what parts were prepared  
12                 after the case was over?

13                 MR. PEPPER: Your Honor, what do the words when the  
14                 case is over mean? When the wiretap was concluded or when  
15                 the arrests were made in this case? There is no time frame.

16                 THE COURT: Yes. I would like to straighten out,  
17                 Mr. McAlevy and also it would help me more if you go speci-  
18                 fically to the pages you are interested in. First find out  
19                 what we mean by when the case was over. To me this case hasn't  
20                 b7                 begun yet.

21                 MR. McALEVY: I certainly will follow the Court's  
22                 direction. I wonder if my adversary would be kind enough  
23                 to furnish me with the originals because on the top of these  
24                 pages there is something muddled, a type of writing and perhaps  
25



1 arh42

Eaton-cross

1152

2 we could clear that up with the original.

3 THE COURT: Just a second. Do you have it, Mr.  
4 Feffer?

5 MR. FEFFER: I think what counsel is referring to  
6 is the top of page 2, a portion was Xeroxed from another  
7 page and that is the muddled writing.

8 THE COURT: Show him the original during our ten-  
9 minute recess which we will take and find out about it.  
10 Ten-minute recess.

11 (Recess)

12 THE COURT: Proceed.

13 BY MR. McALEVY:

14 Q Detective Eaton, speaking about when the case was  
15 over, what do you mean by that?

16 A I would refer to probably February 4, 1973.

17 Q I take it then the fourth page on where you have  
18 the chart set forth, that was made prior to February 4th?

19 A I get an indication it was made after December 23rd  
20 and probably prior to February 4th.

21 Q I notice that on page 4 that the next name underneath  
22 Joseph Guarino is Diane's Bar and Grill. Then you have stated  
23 immediately to the right of that "Beansy-Stephen Della Valle  
24 secretly owns this bar."

25 Did you put that in there?

1           A     Most likely, yes.

2           Q     There is no question in your mind is there, sir,  
3                 that back between December of 1971 and February of 1972 that  
4                 Stephen Dellacava was Beansy and the secret owner of Diande  
5                 Bar, is there?  
6

7           A     That is after December 23rd we did a background  
8                 on him, that is right.

9           Q     Would you go to the next page please, sir.

10           I take it that part of the chart was also prepared  
11                 at the same time?

12           A     I believe so.

13           Q     What did you use to aid you in preparing this chart?

14           A     Information and observations and intercepted con-  
15                 versations.

16           Q     When you say information do you mean hearsay infor-  
17                 mation from other police officers or other official sources?

18           A     Other police officers, yes.

19           Q     With respect to page 4, did you ever determine  
20                 who Joseph Guarino was living with at the Bronx address as  
21                 set forth?

22           A     Well, that came off a license plate, that address,  
23                 listed to Guarino.

24           Q     I didn't ask you where you got it. I asked you if  
25                 you ever determined who that person set forth on that chart

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Eaton-cross

2 was.

3 A Leo Guarino.

4 Q You mean the defendant, my client?

5 A Yes.

6 Q That was his address, you checked that out?

7 A Not his address. That is the address the car he had  
8 been operating came back to.

9 Q The car was registered to one Joseph Guarino, is  
10 that correct?

11 A I don't recall.

12 Q My question is where did the name Joseph Guarino  
13 come from?

14 A I don't recall where it came from.

15 THE COURT: Didn't you say you got it off a license  
16 plate?

17 THE WITNESS: The address. The car was registered  
18 to a female and I might have obtained this information from  
19 other police officers as to the Joseph part.

20 THE COURT: Did you ever learn this Guarino had a  
21 brother named Joseph?

22 THE WITNESS: No, I didn't.

23 Q Isn't it a fact that this car was registered in  
24 the name of Florence Guarino?

25 A It is possible. It was a woman's name.

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1  
2 Q My question is where did the name Joseph come into  
3 this chart?

4 THE COURT: What is the relevance of it?

5 MR. McALEVY: Credibility, your Honor.

6 THE COURT: Well, I don't know how I can keep  
7 everything separate. I have a record of Joseph Guarino before  
8 me as part of the record of this case and to keep pursuing  
9 where the car is and so on I don't think is going to be very  
10 useful but go ahead.

11 I thought I would take it as it came in the case  
12 and one is his brother Joseph as I understand it.

13 MR. McALEVY: That is why I was wondering why the  
14 officer would have the name on this chart as he tells us it  
15 was made up early in 1972.

16 THE COURT: I understand but when you get through  
17 with that I am not at all sure where you will be. Having  
18 given you that advice I invite you to proceed.

19 Q With respect to the warrant signed by Judge Birns,  
20 no question about the fact that that was to intercept the  
21 conversations of Joseph Della Valle up at Diane's Bar and  
22 at Mr. Della Valle's home?

23 A That is a fact.

24 Q Any conversations made between Joseph Della Valle  
25 and his co-conspirators etc., isn't that a fact?

1 A That is correct.

2 Q Did you intercept any phone calls where you  
3 overheard my client Leo Guarino under the first order? In  
4 other words, from December 9, 1971, to January 5, 1972?

5 A I don't recall.

6 Q You certainly checked over your logs and transcripts  
7 before you came to court yesterday, did you not, Detective  
8 Eaton?

9 A I didn't check the transcripts, no, I didn't.

10 Q Can you tell me did you hear Mr. Guarino at any  
11 time during the first order for Diane's Bar engaged in a  
12 phone conversation with Joseph Della Valle?

13 A I don't recall any.

14 Q You have checked these logs over, haven't you?

15 A I have looked them over but I didn't look for any  
16 specific conversations.

17 Q I just don't mean the other day. Didn't you testify  
18 that since you first got into this case, that after logs were  
19 made you would frequently go back and check over logs and  
20 write in different names after you learned more about people?

21 A That is correct.

22 Q So would it be fair to say that your answer to the  
23 question if Leo Guarino was ever intercepted having a con-  
24 versation with Joseph Della Valle during the months of  
25

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2 December and up to January 5, 1972, the answer would be an  
3 absolute no rather than I don't know?

4 A It couldn't be an absolute no because I don't know  
5 if he was ever intercepted. I explained what my problem is  
6 with Joseph Della Valle's voice. I assumed all along I was  
7 listening to the wrong guy but as far as I know he was never  
8 intercepted in a conversation with Joseph Della Valle.

9 Q In your own mind I believe you testified yesterday  
10 that there came a time when you realized your mistake con-  
11 cerning the voice of Joseph Della Valle. What date was that?

12 A That I made a mistake identifying the voice?

13 Q Yes.

14 A A few days ago.

15 Q No. I mean with respect to conversations between  
16 Steve and Beansy, when did you discover actually in your own  
17 mind that those interceptions were in fact Mr. Dellacava rather  
18 than Mr. Della Valle?

19 A December 19, 1971.

20 Q Now, prior to December 19th, is there anything in  
21 your records to indicate Mr. Guarino spoke to Della Valle  
22 on those intercepted calls?

23 A I don't think so.

24 Q When is the first time Leo Guarino appears on any  
25 of your logs?

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A I am not sure.

Q During this time, sir, when you heard a nickname over the phone, either you or your fellow officers, a nickname unknown to any of you, what was your practice?

A That is difficult to say. If it was irrelevant, nothing.

Q Let us say it was relevant.

A Try to determine who it is.

Q Isn't it a fact that early in the logs of the first Judge Birns order or warrant that the name Beans appears on a multitude of occasions before the 19th of December?

A I don't think -- it may well be that. I don't know.

Q Would you like to look at your logs and see if that refreshes your recollection?

THE COURT: I don't think it is necessary to have him tell us what the logs say.

Q You were present when my client was arrested on February 3rd, were you not?

A That is correct.

Q You testified that you overheard my client on the phone on that same day?

A Right, that is correct.

Q Did you know what his full name was at that time, on February 3rd?

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1 A I believe so.

2 Q What was it?

3 A To me it was Leo Guarino.

4 Q Did you have an address concerning him at that time?

5 A I am not sure.

6 Q Are you testifying that you actually knew who the  
7 man was or knew, just knew the name Leo Guarino?

8 A I knew the name. Whether I knew the man, I am  
9 not sure.

10 Q Did you ever determine that Mr. Guarino had a  
11 criminal record?

12 A I did but at what point? It could have been the  
13 night he was arrested. I am not sure.

14 Q Pardon?

15 A I don't know when I determined that. Eventually  
16 it did come out he did have one.

17 Q It wasn't during the month of December, 1971, was  
18 it, sir?

19 A I don't think so.

20 Q Wouldn't you have remembered that? That would be  
21 important, would it not?

22 A If he had a criminal record? Yes, it would be  
23 important.

24 Q But you don't remember when you found out about  
25



Mr. Guarino's criminal record, do you?

A No, I don't.

Q Did you hear Mr. Guarino speak with Beansy on the phone some time after the 19th of December?

A I don't know.

Q When did you first find out anything concerning Mr. Guarino and his involvement in this case?

A It may have been during the conversation with John Capra. I am not sure.

Q When did that conversation take place?

A I don't know.

Q Was it before the 19th of December?

A I don't know. It may have been. I am not sure how we got the name.

Q Which conversation are you talking about?

A I think there is one conversation where John Capra and Steve talked about Leo. I am not certain.

Q What were they speaking about?

A I don't recall.

Q Was it drug related?

A I couldn't speculate.

Q Now, the conversation, December 23rd, he asked for Johnny Hooks or Leo, there may have been an occasion that a Leo was involved, whether on the 23rd, you had some

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indication that a man named Leo was involved with narcotics,  
is that a fact?

A I got this impression, yes.

Q Prior to that conversation is there one shred of  
proof that Leo was involved in any drug related activities?

MR. PEPPER: Objection, your Honor. The logs speak  
for themselves and moreover I don't think it is relevant  
for the purposes of this hearing.

THE COURT: How about that?

MR. McALEVY: Just his recollection.

THE COURT: Mr. Feffer states it is irrelevant and  
with respect to the logs they show whatever they show.

MR. McALEVY: I just want to show this man's  
state of mind if he can tell us. I feel that the logs do  
speak for themselves but I don't think this question is ir-  
relevant whatsoever.

THE COURT: Why is it relevant?

MR. McALEVY: Judge, I would rather explain that--

THE COURT: You can tell me from there, why is it  
relevant?

MR. McALEVY: It's the first time Detective  
Eaton implicates Mr. Guarino is on or after the 23rd day of  
December, then I certainly think that the warrant as it sets  
forth the persons to be overheard, I think that any conversation

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2 or any inkling Mr. Eaton got would have been a direct result  
3 of an illegal overhear.

4 THE COURT: Was Guarino included as one to be  
5 overheard?

6 MR. FEFFER: No.

7 THE COURT: I don't understand your point. Objection  
8 sustained.

9 Q Is there any question about the fact that Leo  
10 Guarino was overheard on the first order?

11 A I don't think he was but I am not sure.

12 Q Was his name mentioned on the first order in a  
13 conversation between Mr. Capra and Mr. Dellacava?

14 MR. FEFFER: Objection, asked and answered.

15 THE COURT: Yes, sustained.

16 Q As a result of the conversation between Mr. Capra  
17 and Mr. Dellacava you continued to do your investigation  
18 concerning Mr. Dellacava, did you not?

19 A Yes.

20 Q I believe you testified of a trip you took up to  
21 the Bronx etc. This was all as a result of a conversation on  
22 the 23rd, was it not?

23 A That is correct.

24 Q You know at that time that Mr. Della Valle was the  
25 only person to be intercepted, did you not?

1           A     That is correct.

2           Q     Why did you follow Mr. Dellecava on that day?

3           MR. PEPPER: Objection. This was gone into at length  
4 by Mr. Slotnick.

5           THE COURT: I think so. Sustained.

6           MR. McALEVY: May I have just a moment, if your  
7 Honor please?

8           THE COURT: Yes.

9           (Pause.)

10          MR. McALEVY: That is all I have, your Honor.

11          BY MR. FEITELL:

12          Q     You mentioned on your direct examination or somewhere  
13 during your examination that there came a time early around  
14 December 11th or 12th, 1971, when you began to have a festering  
15 thought that Joseph Della Valle was the person that you were  
16 listening to, and I am talking about the fact that it turned  
17 out to be Stephen Dellacava whose voice you heard. Do you  
18 remember that?

19          A     That is correct.

20          Q     Was that around December 11th or 12th?

21          A     12th or 13th, yes, sir.

22          Q     Can you pick out for us the circumstance which  
23 gave rise to the doubt?

24          A     As I testified yesterday, he either called Jimmy  
25

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or Blacky and gave me an opportunity to listen to the voice a few more times, either the 11th or 12th of December, whatever date it was. I thought at least now I think I detected maybe there was a difference in the voices and how could he have five or six nicknames.

Q Really the doubt grew out of what you heard when they piped in over the telephone to you from the Bronx plant these voices when you learned Joseph Della Valle's voice?

A That is right.

Q On the 11th or 12th?

A Yes.

Q Now, by the 11th or 12th had you heard Mr. Dellacava on the telephone in any narcotic related conversation which was then apparent to you as such?

A Prior to the 11th or 12th?

Q Prior to the 11th or 12th.

A Yes.

Q What day was that that you first heard Mr. Dellacava in a drug related conversation?

A I am not sure, counselor.

Q But you know it was before the 11th?

A I think it was.

Q When did the tap go in, do you remember?

A The 9th of December. I am not too sure on that point.

1           Q     Do you remember the first drug related conversation  
2           he had?  
3

4           A     I know what it was.

5           Q     What was it?

6           A     The conversation about being sick.

7           Q     Nothing before that time, right?

b9 8          A     I'm not sure.

9           Q     If you please, take a look at the log, page 7  
10          under date of December 11, 1971, 1916 hours.

11                In looking at the logs, is there anything that  
12          brings to your mind the fact that was a drug related con-  
13          servation?

14          A     It says -- originally marked NP and changed to  
15          pertinent and a name added.

16          Q     It looks like it was changed to pertinent?

17          A     Yes.

18          Q     On your log?

19          A     Yes. It might have been a review.

20          Q     Do you know who wrote the name Beansy after the  
21          word male? Is that your handwriting?

22          A     It may be.

23          Q     Is that Mr. Fishman's handwriting?

24          A     I don't think it would be Mr. Fishman's handwriting.  
25          It looks like mine but it could be somebody else's.

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Q And originally it was entered as NP, right, and then somebody wrote on that in a ballpoint pen the letter EP which means what?

A Probably on playingback this conversation it was picked up as a drug related conversation.

Q Had you heard that conversation on the date it was recorded, the 11th?

A I probably did.

Q Well, when you heard it did you do anything to the log?

A On the date? I don't know when I heard it, counselor. I wasn't monitoring the plant. I was in the vicinity of the plant.

Q But you believe you heard that call that day?

A I don't know if I heard it that day. I heard it subsequently.

Q As a matter of fact you don't know how long there- after you heard that tape of that call, do you?

A I don't recall when.

Q Do you recall what the call was about, that call?

A I would have to look if there is a transcript of it.

Q Don't you have the transcript in front of you?

A No, I don't.

MR. FEITELL: Do you have the transcripts?

1  
2 MR. FEFFER: That was marked as your exhibit, wasn't  
3 it?

4 MR. FEITELL: Weren't you going to get us clean  
5 copies so we could slip this away and replace it because  
6 these are our markings?

7 MR. FEFFER: I will try to get one.

8 Q Will you please take a look at 1A for identification,  
9 December 11, 1971, 1916 hours. Is that the conversation that  
10 we are talking about now?

11 A Yes.

12 Q Who prepared the transcript for that?

13 A I probably did.

14 Q When did you do that?

15 A It could have been almost a week later.

16 Q After you had replayed it?

17 A We fell way behind in transcription. In fact, I don't  
18 think we did any transcripts until the 15th, 16th or 17th  
19 of December.

20 Q That was the first time you did transcripts?

21 A I think so because we may have had two machines.

22 Q I am not asking why or anything.

23 A I think so.

24 Q Was the first time the 16th or 17th?

25 A It was late, yes.



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Q Maybe the 18th?

A I am not sure. It took a week, ten days or thirteen days before we made transcripts.

Q When you went to see Mr. Fishman what day was that?

A The 20th.

Q Did you have the transcripts with you?

A I believe I had some of them.

Q Which ones did you have with you?

A I am not sure. I think Mr. Fishman has a notation in the diary, I am not sure.

Q Did you bring with you all the transcripts that related to drug related conversations that had taken place up to the time you saw him?

A No.

Q Do you know when you stopped preparing transcripts?

A Not what date it was cut off, by the time we got the transcripts. I said we were way behind.

Q When you saw him on the 20th and brought him transcripts up, to what date did they embrace?

A I don't know.

Q With respect to this December 11, 1971, transcript, you typed it yourself?

A I may have; I am not sure.

Q In reading it this purports to be exactly what you

1 arh59

Eaton-cross

2 heard on the tap, starting off with the in and out?

3 A Right. This should be an exact copy of the conver-  
4 sation.

5 Q In this transcript it says incoming call, in Beansy.  
6 Who put in the word Beansy?

7 A Whoever typed it.

8 Q Who told them to put in the word Beansy?

9 A I don't know.

10 Q Had the name Beansy come up on that conversation,  
11 in this transcript?

12 A By th time this was typed, counselor, there was  
13 no name at all and they put the name in of the guy when  
14 although it was Blacky they should have put Blacky instead  
15 of Beansy.

16 Q Blacky, that should be Blacky?

17 A That is right.

18 Q Because they thought they were listening to Blacky?

19 A That is correct.

20 Q But the word Beansy appears there?

21 A That is right.

22 Q You are the one who wrote up the transcript  
23 according to the way they should be after correction?

24 A I didn't write them, they were typed up.

25 Q What date is that?

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MR. FEITELL: The date of the conversation is December 11, 1971, 1916 hours.

Q Now, this conversation is supposed to be with a male negro, right, according to this particular conversation?

A Yes.

Q Do you see anything scratched in there that you perhaps could read?

A It looks like Vino Green.

Q Who wrote that name in there?

A I may have.

Q Does the name Vino appear on this call to your knowledge?

A No, it doesn't.

Q So that the basis for concluding the name Vino Green there arises from something known to you directly or indirectly outside of the scope of this particular overhear, right?

A Yes.

Q Do you know where the original notes are for this transcript?

A Wherever the original transcripts are.

Q Obviously. You don't know where the original notes are?

A If Mr. Fishman doesn't have them perhaps Mr. Feffer

has them.

Q Are they written out in handwriting to begin with?

A No, typed.

Q They were typed? By who?

A I may have had somebody else who may have done it. We were way behind. I don't know when this was prepared. I don't know on what hearing this -- this originally was put on a non-pertinent conversation. This could have been picked up I don't know when.

Q That was thought not to be significant?

A Correct.

Q Did you bring it to Mr. Fishman when you saw him on the 20th?

A I may have.

Q In that form?

A I said I may have.

Q With the name Beansy on the 20th?

A It is on there.

Q And you stopped typing these transcripts on about the 16th or 17th, right?

A I think so.

Q So that name Beansy was on there on the 16th or 17th, right?

A That is correct.

Q That is before the call of the 19th when somebody turned and said to Beansy "You are going to be here until 3:30"?

A That is right.

Q When you started getting this feeling around the 11th or 12th that you were tapping in on somebody different from Joseph Della Valle, did you discuss that with Mr. Fishman then and there?

A I may have, I don't know.

Q You are not sure of that at all, right?

A No, I am not. I know I had several arguments in the plant over the identity of the parties on the phone.

Q It was worth talking about in the plant, wasn't it?

A Yes, it was.

Q That you remember talking about it, right?

A I may have told Mr. Fishman too.

Q That you remember talking about in the plant?

A That is right.

Q With your fellows?

A Yes.

Q You weren't having meetings with Mr. Fishman every day of the week at this time, were you?

A I was talking--

Q Yes or no.

MR. PEEPER: May the witness answer the question?

MR. FEITELL: The witness is making speeches.

THE COURT: I haven't heard that. What is the answer to this question?

A I did speak to Mr. Fishman, I did not meet with him personally. I had telephone conversations with him.

Q Every day of the week?

A No, sir.

Q You spoke to your buddies, yes or no, your fellows in the plant more often than you spoke to Mr. Fishman, right?

A That is correct.

Q When you were speaking to Mr. Fishman and you were talking to an assistant district attorney of New York County in charge of the investigation, right?

A That is correct.

MR. SLOINICK: Could the witness speak up a little louder?

THE COURT: Will you talk a little louder?

THE WITNESS: Yes.

Q You have no clear recollection of having told him around the 11th and 12th that you and your fellow officers were concerned about what you were listening to, right, at the plant? You don't have any recollection of that specifically?

1 A No, I don't.

2 Q When that possibility of error began to emerge  
3 in your mind did you say to yourselves in words or substance  
4 if I am listening to the wrong fellow maybe I should start  
5 minimizing it, do you say that to yourself?  
6

7 MR. FEFFER: Objection.

8 THE COURT: Objection sustained. I don't think  
9 it is relevant what he says to himself.

10 Q With respect to this fellow Beansy on December 11th,  
11 did you start to minimize the Beansy calls on or about  
12 December 11th when your doubts began to emerge?

13 A Not me personally, no.

14 Q Did you give any instructions to your brother  
15 officers to start minimizing the Beansy telephone calls?

16 A No, I only had doubts. I still wasn't sure.

17 Q They had doubts too, right, yes or no?

18 A Not really.

19 Q But you talked about the doubts you had?

20 THE COURT: Mr. Feitell --

21 MR. FEITELL: All right.

22 THE COURT: Look, don't say all right, think in  
23 advance of saying all right of my entreaties and cut out this  
24 repetition.

25 MR. FEITELL: Nobody repeated this, Judge. Somebody

1       arh65  
2       else cover this?

3           Q     By the time you got to December 19th, now you were  
4       really clearing your own mind that you were dealing with a  
5       person, this Beansy was somebody different than Joseph  
6       Della Valle?

7           A     That is correct.

8           Q     When that realization came to you, did you then  
9       proceed to minimize the Beansy calls?

10          A     No.

11          Q     Did you tell your brother officers in the plant  
12       to minimize the Beansy calls?

13          A     No, we had received --

14          Q     Yes or no.

15          A     No.

16               MR. FEFFER: May the witness answer the question?

17               THE COURT: No, no is the answer. We will get  
18       through faster if he just answers the questions.

19          Q     Did you ever have any information that Joseph  
20       Della Valle worked in Diane's Bar?

21          A     Not as an employee of the bar.

22          Q     Well, did you have information that he worked in the  
23       bar not as an employee of the bar?

24          A     Yes.

25          Q     Where did you get that from?



1           A     From the contents of the informant and other  
2  
3     detectives.

4           Q     What was his job?

5           A     Narcotics business.

6           Q     That is what he did in the bar, made a living in  
7     narcotics in the bar, right?

8           A     He operated out of the bar.

9           Q     But he wasn't turning the lights on in the place,  
10    on and off, was he?

11          A     Not that I know of.

12          Q     Opening and closing, was he?

13          A     No.

14          Q     Sweeping out, was he?

15          A     Not that I know of.

16          Q     He had two cars, a Tornado and --

17               MR. FEFFER: Objection, your Honor.

18               THE COURT: What is the relevance of that, Mr. Feitell?

19               MR. FEITELL: Taking the witness through the  
20    likelihood he was employed in the bar in these menial  
21    capacities.

22               THE COURT: What is the relevance of that?

23               MR. FEITELL: In view of his apparent wealth.

24               THE COURT: You think that is relevant?

25               MR. FEITELL: I think it is.

1 THE COURT: Why?

2 MR. FEITELL: Why is it relevant?

3 THE COURT: Yes.

4 MR. FEITELL: Well, I am getting into something now--

5 THE COURT: Please tell me what.

6 MR. FEITELL: Right now -- can I come to the side  
7 bar?

8 THE COURT: State it right out, I don't understand  
9 all this side bar business.

10 I heard this detective for a day and a half and  
11 I will make judgments of credibility. Now, answer my question,  
12 please.

13 MR. FEITELL: We are going to find out through this  
14 witness if you permit me whether he had any reasonable basis  
15 for believing that Joseph Della Valle was employed in the bar,  
16 as a bartender that is.

17 THE COURT: He already told you no. Do you think  
18 that answer is false?

19 MR. FEITELL: No, I don't think it is false.

20 THE COURT: You think it is truthful?

21 MR. FEITELL: In any capacity. I didn't get an  
22 answer the first shot out of the box.

23 THE COURT: Now, Mr. Feitell, please let us move on.

24 Q Turning to the original logs, will you address  
25

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Eaton-cross

2 yourself to the page that I have turned to in this Exhibit  
3 1B, call 1535 on December 12, 1971, where you are listed  
4 as the first named officer on duty there.

5 A Yes.

6 Q Was that entry as it appears in the original log,  
7 does that bring to your mind as to who was speaking on this  
8 call?

9 A No, sir.

10 MR. FEITELL: May I have, Mr. Feffer, those logs  
11 that you told me your office was working on, which is your  
12 copy where the names are scratched in?

13 MR. FEFFER: That is the copy you have.

14 MR. FEITELL: I want the original counterparts of  
15 the yellow sheets.

16 MR. FEFFER: You have the copies we have in our  
17 possession.

18 MR. FEITELL: Could I examine it? Entry 1535 at  
19 the bottom of the page, male-female and in our copy of the  
20 transcript they have Steve and Jean, I believe, but not on  
21 the one in front of him.

22 MR. FEFFER: Then the one you have in your hand is  
23 correct. We have notes on ours too. You can show this, I have  
24 no objection.

25 MR. FEITELL: That is the first time that I marked

up the carbon copy. Had I known I wouldn't have asked for it.

Would you take a look at my copy of the logs, which is derived from the copy that Mr. Feffer has, this particular entry where over the name male the word Steve is written and over the word female Jean is written.

A Yes, I see it.

Q Do you recall in that conversation Steve got on the phone at a certain point in the conversation? Incidentally, do you recall whether the conversation was cut or minimized?

A I don't recall the conversation at all.

Q Well, in listening to these tapes do you recall on this particular occasion Steve told Jean he couldn't talk to her, he was tending bar?

A I don't recall the conversation at all.

Q So that if you had heard this tape recording and heard Steve telling Jean that he was tending bar you would know that that wasn't Joseph Della Valle because he didn't work there as bartender, right?

A It is logical, yes.

Q You would have known that on December 12th when this happened, right, when this call happened?

A Probably, yes...

Q So you would have some additional basis for the conclusion that on the 12th Steve was different from Joseph

1 arh70

Eaton-cross

2 Della Valle, right?

3 A Possibly.

4 MR. PEPPER: May I make an objection at this point?

5 We covered this same area that we had before, where the  
6 copy of the logs that were furnished to the witness have  
7 notes on them added afterwards and these notes in this case  
8 containing the additional information Steve and Jean was not  
9 placed down by the monitoring officer. In other words --

10 THE COURT: Then it is something you can argue later.

11 MR. PEPPER: I am bringing it up at this point  
12 because it was done before. It seems to me the logs to be  
13 shown are the logs that are in evidence. There is no in-  
14 dication that this witness or any other witness put these  
15 additional names on there which is what Mr. Feitell is getting  
16 at.

17 THE COURT: You are going to have to handle that,  
18 that is a question of fact.

19 MR. PEPPER: That has already been represented  
20 to the court by the government that this was done last winter.  
21 These names were done last winter.

22 THE COURT: Sure it was represented in entirely good  
23 faith but if the defendant wants to attempt to show something  
24 different I can't stop him and I have got to decide on the  
25 basis of the record what the fact is. I don't know when it

2 was done.

3 MR. FEFFER: I thought defense counsel accepts  
4 the representation.

5 MR. FEITELL: I was willing to accept it but counsel  
6 countermands it and makes arguments like this in front of  
7 the witness maybe I will rejoin. I want to work with it now.

8 THE COURT: I will allow it.

9 MR. FEITELL: I would like to offer for the record  
10 when turning over logs we should get the logs this witness  
11 is forced to work with, not the logs that somebody else worked  
12 on that leads us down byways and traps.

13 THE COURT: As Mr. Feffer reminds me there was a  
14 representation joined in by you and then I suppose there is  
15 some point in his suggestion that it may not be suitable  
16 to question the witness eliciting that agreed state of  
17 affairs and showing the Steve and Jean thing when it is  
18 likely he does not know it was represented to have been made  
19 last winter. I don't know where all this leads us but we  
20 go ahead.

21 Q When you made these -- you made these original logs?

22 A In this case I did.

23 Q How were the logs actually made down in the plant?

24 A The logs, I believe two handwritten copies.

25 Q Take page 1 of the log in front of you and tell me

whether that is a log that was opened up, page 1 is the first page of the log opened up in that plant on that day?

A That is correct.

Q That is the very first piece of paper that was utilized at the plant for log purposes?

A That is correct.

Q Is it your testimony that that is not a rewrite of an earlier version of the log?

A No, that is the original log.

Q As the call came in the entry was made contemporaneously or virtually by the entrant, right?

A Yes.

Q And when he was working, was he working with one sheet, two sheets, how many copies was he making, if any?

A Original and a carbon.

Q So that the carbon should really be a complete duplicate at least of everything that is on the original, is that correct?

A That is correct.

Q Now, what happened to the carbon copy as events developed?

A The carbon copy?

Q Yes.

A Placed in the SIU office. Do you mean whether there

are notations made on the carbon?

Q Yes.

A It is possible.

Q Wouldn't one of the reasons to have the carbon copy be so that when you came upon additional information instead of marking the original you could engrave it on the copy?

A The reason for keeping the copy was the original is supposed to be sent to the DA's office and if you have to make a referral back to what occurred previously, that is what the carbon copy is for.

Q But you said you held the original and carbon some time?

A Yes. I am telling the principle.

Q When for the first time was the original of the logs surrendered?

A I guess the 20th of December.

Q Did you surrender it to Mr. Fishman?

A Yes.

Q He kept it?

A Yes.

Q From that point on you kept the carbon?

A Yes.

Q You never saw the original again after that?



1 A I see it now.

2 Q But from that date on, December 20th onward,  
3 the original with the log entries up to the 20th were in  
4 Mr. Fishman's hands, is that right?  
5

6 A That is correct.

7 Q So that if you were doing some additional reviewing  
8 after you gave up the initial logs and wanted to make a new  
9 entry on the log, the only log you had to work with was the  
10 carbon copy?

11 A That is correct.

12 Q So the carbon copies do bear additional information,  
13 correct?

14 A Possibly. I am not sure.

15 Q When if ever did you surrender the carbon copy  
16 of the log?

17 A We never surrendered it, it went into the SIU file.

18 Q You worked with that throughout this case, correct?

19 A Apparently, yes. I did not, but somebody did.

20 Q Do you know who the people are who worked?

21 A Yes.

22 Q You had conversations with them?

23 A On occasion.

24 Q You answered their questions, correct?

25 A That is correct.

1 arh75

Eaton-cross

2 Q Certain times they were listening to tapes or  
3 tapes of tapes, right?

4 A That is correct.

5 Q Because the tapes were also sealed?

6 A That is right.

7 Q And they would ask you something and you would  
8 say perhaps this is so and so or Steve or Jean or something  
9 like that, correct?

10 A That is correct.

11 Q They may have made endorsements reflecting your  
12 own knowledge, correct?

13 A Yes.

14 Q On this 3502 material turned over to us, this  
15 chart, you drew it, you said, page 3 of the material that  
16 we have, right?

17 A Yes.

18 Q You will notice a paper clip Xerox which beautifully  
19 brackets the date December 11, 1971, of Stephen Dellacava?

20 A That is correct.

21 Q This left-hand column with that date 11 what is  
22 the significance of that date?

23 A Possibly the first time that he was either on the  
24 wiretap or maybe his car was observed in the vicinity of  
25 the bar and grill.

arh76

Eaton-cross

Q On the 11th of December, 1971, you are saying his car might have been seen in the vicinity?

A Yes.

Q You are the person who drew this report, right?

A What I did was either at the end of the case or near the end of it I reviewed the whole case folder and picked them out as they showed up. In other words, of how they were involved, whether on the wiretap or observation and made out these as you see them.

Q In connection with this case, you took Stephen Dellacava back at least to December 11, 1971?

A Yes. As I say --

Q Yes or no.

A Yes.

Q So this 1971 Buck is where you got this?

A We may have gotten it prior to this but on December 23rd I know we had it for sure.

Q You had it for sure on December 23rd?

A Yes.

Q How did you get it for sure on that date?

A We took it off the car as it came out of the bar. We may have had it before that, I don't know.

Q If you had this before you would have known to him the car was registered?

1           A     That is right.

2           Q     So you could have known on December 23rd as soon  
3           as you saw this man get into this car with this number that  
4           number belonged to Stephen Dellacava, right?

5           A     I don't think I did to tell you the truth but  
6           it is possible that plate had been taken earlier. It just  
7           didn't mean anything.

8           Q     When you arrested the defendant on February 3, 1972,  
9           you had just seen him pull up in an automobile at Rockefeller  
10          Center near the statue?

11          A     Yes, he had arrived in an automobile.

12          Q     What kind of automobile was that?

13          A     The same car as described here.

14          Q     You are saying a 1971 Buick that he came in with?

15          A     The same plate number. I think it was probably  
16          his car. It may have been an Oldsmobile. I thought it was  
17          a Buick.

18          Q     Now you recollect that it was an Oldsmobile  
19          he was driving?

20          A     I think so, yes.

21          Q     When he emerged, came out of the bar on the 23rd,  
22          what did he get into, a Buick or an Oldsmobile?

23          A     The car he owned, the one bearing these registration  
24          plates.  
25

Q You are not really sure what kind of car he got into, you knew the plates that were on this car, right?

A Yes.

Q So you can't tell me you found out he was driving a Buick on the 23rd because you don't remember it was a Buick, right?

A At the time --

Q Yes or no.

A Right.

Q Now, your recollection tells you that the car he was driving on February 3rd with the same license plate as indicated here was not a Buick but an Oldsmobile?

A That is right.

Q But all the while you had this license plate number which you could use to determine it, correct, yes or no?

A I don't understand the question.

Q You had the license plate number for the purpose of checking his identity if you wanted to check?

MR. FEFFER: When? Objection.

Q The 23rd.

THE COURT: What is the relevance of that? It was pretty well identified by the 19th in my hearing.

MR. FEITELL: All right.

Q You were able to identify the defendant on or

1 about the 19th, is that correct?

2 A No, I became aware he was a different party on the  
3 19th.  
4

5 Q But at this point did you know who Beansy was?

6 A No, I didn't. If it ever came up before I didn't  
7 recall it.

8 THE COURT: You are trying to pinpoint more closely  
9 when he knew or should have known that Beansy was Dellacava,  
10 is that right?

11 MR. FEITELL: That is what I was working on.

12 THE COURT: All right. I take back my restriction  
13 of you. Go ahead.

14 Q Going back to July, 1971, you had been involved  
15 in the Cucciniello taps, is that correct?

16 A That is correct.

17 Q The name Cucciniello was a person who was a  
18 target of that inquiry, was he? The name was on the order  
19 in those cases?

20 A Yes, he was.

21 Q You heard telephone conversations in which  
22 Cucciniello said that he was going to Beansy, right?

23 A That is correct.

24 Q You knew Beansy at 2034 Second Avenue?

25 A That is where he went, yes.

1           Q     In connection with that case you made up a case  
2  
3 of characters, didn't you?

4           A     Eventually, yes.

5           Q     You were keeping dossiers on these as you went  
6 along in that important investigation, of the names that  
7 came up, didn't you?

8           A     Eventually, yes.

9           Q     There came a time when you listed them all on one  
10 sheet of paper, right?

11          A     Maybe, yes.

12          Q     But before you listed them on one sheet of paper  
13 you listed names on other sheets of paper, correct, or these  
14 names appeared on sheets of paper, correct?

15          A     I am not sure.

16          Q     Are you telling me the name Beansy or Beans doesn't  
17 appear in any of the reports in connection with this  
18 Cucciniello July, 1971, overheard?

19          A     The transcripts and logs, yes, it does.

20          Q     You listened to the tapes too, didn't you?

21          A     Yes, I did.

22          Q     You heard Beansy, the name Beansy?

23          A     Yes, I did.

24          Q     And you knew that Cucciniello was going to Beansy  
25 or meeting other people also subject to investigation, right?

1  
2 A He did go there and meet people, yes.

3 Q You found out that Beansy was a kind of hangout,  
4 right?

5 A I don't know if it was a hangout. My only interest  
6 was when Cucciniello was there.

7 Q You didn't care anything about anybody else, just  
8 Cucciniello?

9 A In my mind earlier --

10 Q Yes or no.

11 A There were other individuals involved in it that  
12 I cared about.

13 Q When Mr. Fishman gave you instructions in connection  
14 with this wiretap, you knew that you might be listening in on  
15 the commission of other crimes, didn't you?

16 A The possibility existed.

17 Q You had instructions to deal with that contingency,  
18 didn't you?

19 MR. FEFFER: Objection, which wiretap?

20 MR. FEITELL: The instant wiretap, this case.

21 THE WITNESS: May I have the question please?

22 THE COURT: You have answered it. Next question.

23 A Yes, I was.

24 Q So you knew, you had received similar type  
25 instructions in connection with the Cucciniello case, correct?



1 A Yes.

2 Q So that if any crimes came across your horizon  
3 during the course of the overheard, you would be listening  
4 in for that too, wouldn't you?

5 A Not listening for it. If it came up we were to  
6 take some steps.

7 Q You wouldn't forget about it, right?

8 A We couldn't, no.

9 Q You knew as part of your job that you would be  
10 interested in names and identities of persons mentioned  
11 on telephones, isn't that so?

12 A Provided if it is an outgoing call you get a name  
13 and if it is irrelevant you don't go any further than get  
14 the name if it is possible.

15 Q It is your testimony that when you heard the name  
16 Beansy and Beansy repeated in the course of the Cucciniello  
17 conversations, knowing that Cucciniello was going to Beansy,  
18 that you deemed that was irrelevant, is that your testimony;  
19 yes or no?

20 A I don't deem it is irrelevant. The party he is  
21 speaking to never talks narcotics on the phone as I recall.

22 Q You heard Cucciniello and it is conceded he had  
23 talked with Beans and Beansey wasn't relevant?

24 A The fact that he was--- the relevant fact is he  
25

spoke to lots of people and--

Q He spoke to Beansy too?

A Spoke to plenty of people.

Q Wasn't it part of your job to find out who he was talking too, yes or no? Was it part of your job when the named person on the top of the order, Cucciniello spoke to somebody, to find out who that person was, yes or no?

A I can't answer that.

Q Did you testify at the Cucciniello hearing to suppress?

A Yes, I did.

Q Did you testify in this proceeding that you listened to all of the conversations on the Cucciniello tapes?

A Probably.

MR. FEITELL: Would you bear with me for a moment?

(Pause)

Q You found out as a result of listening on the tap that very often Mr. Cucciniello went to Beans, right?

A He went to the bar and grill, yes.

Q When you would write this down in the logs did you say that he was going to a restaurant at 2034 Second Avenue or going to Beans?

A I imagine whatever he said, that is what we said.

Q You heard him talk to Beans, didn't you?

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Eaton-cross

A I don't recall him talking to him but I know there were calls involved to him, yes.

Q Are you familiar with the written instructions that-- excuse me a moment -- the written instructions furnished by Mr. Fishman in connection with electronic surveillance?

A Yes, I am.

Q Do you recall in those instructions he indicated that you were to determine the identities of persons whose name in one way or another came up in the investigation?

A The instructions he made up in late 1972?

Q Yes.

A It is possible. I don't recall the whole thing.

Q Incidentally, in the 3502 material, when for the first time did you turn this over to the government?

MR. PEPPER: Objection. We are all government, federal and state and he is part of the government.

THE COURT: Well, you may be part of the government but I know that the physical facts would suggest some turning over at some time. Is that your only objection?

MR. PEPPER: That and also relevance.

THE COURT: What is the relevance?

MR. FEITELL: I want to find out when the government learned as stated in these SIU reports that Stephen Dellacava owns Diane's Bar secretly because such was made of that fact.

1 arh85

Eaton-cross  
redirect

2 THE COURT: I am not much interested in it. I have  
3 ruled in your favor but I have read it and saw those vivid  
4 paper clips on these pieces of paper and the proof of title  
5 may create a problem but I think your client has enough  
6 problems on this already without your pursuing it energetically.  
7 In any event for my hearing I heard enough on this subject.

8 MR. PEITELL: That is all I have.

9 REDIRECT EXAMINATION

10 BY MR. PEPPER:

11 Q Officer, I believe you were shown a portion  
12 of the logs, specifically a telephone call between male  
13 and female at 1535 on December 12th. It was explained or  
14 represented to you by counsel that the male on the phone said,  
15 "I can't talk because I am tending bar."

16 Do you recall that?

17 A I recall him telling me.

18 Q Do you know how long that conversation was?

19 A I have no idea.

20 Q You were also referred on cross-examination to  
21 two telephone calls on the 19th, one at 2:30 and one at  
22 3:30 in the afternoon made by Joseph Della Valle from his  
23 home, his residence, do you recall that?

24 A Yes, I do.

25 Q I believe they also referred to a telephone call at

2:59 made from the bar at Diane's on the same date. Do you recall that?

A Yes, I do.

Q Do you know whether Joseph Della Valle, of your own personal knowledge, was at his house between 2:30 and 3:30 on the 19th?

A No, I don't.

Q Do you know where he was to your own personal knowledge?

A No.

Q Reference is also made to the Cucciniello wiretap. Is that a wiretap on a public telephone?

A Yes.

Q Where is this telephone?

A In the social club, 2127 Second Avenue.

Q Is that frequented by many people?

A Yes.

Q Was Dellacava the subject of that wiretap?

A No, he was not.

Q Anyone called Beansy the subject of that wiretap?

A No.

Q Anyone called Steve?

A No.

Q Did Beansy, Steve or anyone by that name, Dellacava,

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ever become the focus of that investigation?

MR. FEITELL: I object to this, your Honor.

THE COURT: Sustained.

Q Approximately how many conversations were intercepted over this particular wiretap?

A I am not sure. I think 1,700. I am not sure.

Q Do you know that for a fact or are you guessing?

A Not for a fact.

Q In excess of a thousand?

A Yes.

Q Do you recall how many different people approximately used the telephone or had conversations on this telephone? Can you estimate?

MR. FEITELL: I object to the form of the question.

THE COURT: I will allow it.

A Maybe 50 people.

Q Do you recall now approximately how many times an individual by the name of Beansy or Steve was involved on the Cucciniello phone, approximately how many times?

A Well, they said ten. That is possible.

Q Who is they?

A Defense counsel.

Q That you recollect?

A It is possible; ten.

1           Q     Was it part of your job as defined by Mr. Feitell  
2  
3     to allow Cucciniello to meet an individual by the name of  
4     Beansy for the purpose of watching them eat macaroni?

5           MR. FEITELL: I object, that wasn't a question.

6           THE COURT: Sustained. The same ruling if you  
7     make it spaghetti.

8           Q     You were also shown a portion of a log from  
9     Defendants' Exhibit E-1. I believe there is a typed in portion  
10    at the bottom "Steve Dellacava."

11          A     Yes.

12          Q     Do you recall that?

13          A     I was shown this.

14          Q     Did you type that name Stephen Dellacava?

15          A     No, I did not.

16          Q     The date of that conversation was not clear on  
17    the sheet, June 11, 1971. Did you intercept this particular  
18    conversation on June 11?

19          A     No, I did not.

20          Q     You testified to having heard conversations with  
21    an individual identifying himself as Beansy or Stevie during  
22    the first week or so of interception of Diane's Bar, is that  
23    right?

24          A     Correct.

25          Q     At the time when you overheard these conversations,

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recross

did you have any recollection of having heard the name  
Deansy or Stevie in connection with your prior investigation  
of Cucciniello?

A No.

MR. PEPPER: No further questions.

MR. SLOTNICK: Your Honor, I think part of the  
problem as to authentication can be done at this time through  
the detective if I may on exhibits I attempted to offer before.  
I ask that these papers be marked for identification.

(Defendants' Exhibit J marked for identification.)

## RE CROSS EXAMINATION

BY MR. SLOTNICK:

Q I show you Defendants' Exhibit J for identification  
and ask you whether these exhibits are in your handwriting,  
the circled part of each exhibit.

A That is what I am looking at. Only page 1 is my  
handwriting.

Q The first page of the exhibit?

A Right. The one on the second page indicating 626  
incoming is in my handwriting.

One on the third page, 1720 hours incoming is not  
in my handwriting.

On the fourth page, 2025 hours, 2026 and 2110  
I believe is not in my handwriting.



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Eaton-recross

On the 5th page there is another notation 1535 hours, that is not in my handwriting.

On the 6th page there is an entry at 1600 hours, that is in my handwriting.

Q Is it safe to say, therefore, that the exhibit which encompasses pages of the log of the Cucciniello wiretap from August 2nd through August 10th, at least pages 1 and 2 and the last page are in your handwriting?

A That is correct.

Q During this period of time you -- your usual practice would have been to read these logs and these entries, is that correct?

A Yes, that is correct.

Q As a matter of fact, on page 4 of the log entries there are asterisks all over the place with the number 722-9595?

A That is correct.

Q Would you have read it in your normal course of events? Do you recollect reading it?

A I would say if I knew when these asterisks were made.

Q We don't know, is that correct?

A That is right.

Q But in view of the fact that you know you were working December 10 you would have read the logs pertaining to the days you were not there?

A That is correct.

Q Therefore these were made during the course of the Cucciniello wiretap?

A That is right.

Q As a matter of fact the last page, 1600, where you have your initials and your handwriting that is a call to 722-9595 and out to Beansy, is that correct?

rs2

Eaton-recross

A That is right.

MR. SLOTNICK: I offer it in evidence, your Honor.

MR. FEFFER: May I see it, please?

My only objection would be with respect to the stars that were placed there.

MR. SLOTNICK: I concede that.

MR. FEFFER: This officer has no recollection as to when.

THE COURT: Forget what he said. I don't know why he said it. He got this thing and offered it.

MR. FEFFER: There is no problem.

THE COURT: It is received.

MR. SLOTNICK: For this purpose we move to excise the stars and your Honor will not see the stars when he looks at it.

(Defendants' Exhibit J for identification received in evidence.)

xx 20 Q Now, I show you portions taken from Defendants' Exhibit E for identification, two pages --

22 MR. SLOTNICK: I ask that this be marked Defendants' Exhibit K.

24 (Defendants' Exhibit K was marked for  
xx 25 identification.)

rs3

Eaton-recross

Q Detective Eaton, I ask you to read the portion of Defendants' Exhibit K, 14 of the Cucciniello wiretap of July 7 and ask is this in your handwriting?

A Yes, it is.

Q And the red markings, five times under the name Beansy, does that mean it is not yours?

A That is right.

Q The asterisks, are they your asterisks?

A It is conceivable because it tells the whereabouts of Nicky.

Q That was made at that time?

A It is quite possible.

Q That was important to you at that time?

A Nicky's whereabouts is always important.

Q It says Nicky and Beansy?

A That is correct.

Q You knew Beansy was 2035 Second Avenue, is that correct?

A 2034.

MR. SLOTNICK: I offer K in evidence, your Honor.

MR. PEPPER: No objection.

(Defendants' Exhibit K for identification was received in evidence.)

rs4

Eaton-recross

Q Detective Eaton, I ask you to look at Defendants Exhibit E for identification and ask whether the page that I have, the yellow insert, means anything to you?

Will you look at it and see if it refreshes your recollection?

Does it have any meaning whatsoever, especially where I underlined in red as a guide line.

A Yes.

Q What does it mean to you?

A Nicky Cucciniello was telling Caesar that he is at Beansy's and going to go up to the Bronx.

Q There is an indication there that Beansy's -- plant closed, somebody closed the plant and went to 2034 Second Avenue?

A That is right.

Q And it says Beansy's?

A Right.

Q That was done on --

A July 8.

Q Were you working on that day?

A I don't know.

Q Was it possible you were one of the monitoring officers during this conversation, closed the plant and took up surveillance?

1 A I would have to check on it.

2 Q Would you please check on it?

3 Is it possible or probably or sure that you  
4 would have read this conversation during the course of  
5 that investigation?  
6

7 A Most likely.

8 Q That would be prior to, let us say, August of  
9 1971?

10 A Yes.

11 MR. SLOTNICK: I offer this in evidence, only  
12 the red part, your Honor, that I have underlined.

13 MR. FEFFER: No objection.

14 (Defendants' Exhibit I was received in  
15 evidence.)

xx 16 Q The log of July 8, 1971 starts at 2030 until  
17 the closing of the plant at 2200 and arrival at Deansy's  
18 at 2034 Second Avenue.

19 I show you this page marked with the little  
20 yellow sheet of paper and ask if you can see what is  
21 marked in red?

22 A Yes.

23 Q Do you recognize this at all?

24 A It looks like a transcript of the activity  
25 sheet.

1                   Q       Would you have seen this prior to August of  
2  
3       1971?

4                   A       Yes.

5                   Q       This was made on July 10, 1971?

6                   A       Yes.

7                   Q       Again, doesn't it mean Nicky left the club and  
8       went to Beansy's 2034 Second Avenue and arrived there?

9                   A       Yes.

10                  Q       It shows some surveillance?

11                  A       Yes.

12                  Q       Is it possible that you were one of the surveil-  
13       ling team there?

14                  A       I was.    I was the only officer.

15                  Q       That went to 2034 Second Avenue, Beansy's place?

16                  A       Yes.

17                  Q       On that date?

18                  A       Yes.

19                       MR. SLOTNICK:  I move this in evidence.

20                       (Defendants' Exhibit M was marked for  
21       identification.)

22                  A       I followed him to Beansy's, yes.

23                  Q       Was there some question in your mind that you  
24       knew it was called Beansy's on 2034 Second Avenue after  
25       writing that July 11?

1  
2 A I called it Beansy's, a restaurant-bar, yes.

3 MR. FEEFFER: No objection.

4 (Defendants' Exhibit M for identification was  
5 received in evidence.)

xx 6 Q I show you the page of July 11, 1971 and we  
7 have it typed in Beansy's, Stephen Dellacava.

8 Do you know whether you had seen this prior to  
9 July or August of 1971?

10 A No, I don't know. I may have seen it but it  
11 didn't mean anything.

12 Q Whether it means something or not is something  
13 for us to determine at a later date.

14 But does it look like this was typed in later  
15 on or contemporaneous as you knew logs were done?

16 A It is at the bottom of the page. Possibly  
17 it was typed in right then and there.

18 Q That is Stephen Dellacava being identified as  
19 the party at Beansy's?

20 A Whoever identified him, yes.

21 Q Knew he was Beansy and you were not on duty that  
22 day?

23 A No, I was not.

24 Q But you know this was done by one of your  
25 logging officers?



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A Yes.

Q You would have had the opportunity to read or would you have read this within a week after this was done?

A Chances are probably I would have read it and skipped over this other business.

Q Would you have seen it and read it whether you skipped around or looked at it with one eye?

A I might have noticed it, yes.

MR. SLOTNICK: I ask that it be marked for identification and placed in evidence.

(Defendants' Exhibit N was marked for identification.)

MR. FEFFER: No objection.

(Defendants' Exhibit N for identification received in evidence.)

Q It is your best opinion from Defendants' Exhibit N that was shown that you were working with on June 11, 1971, you knew Beansy was Stephen Dellacava?

A Yes.

Q It is also your best guess within a week after this was done you had the opportunity to see it and read it and probably read it and maybe even skimmed over it?

A That is right.

rs9

Eaton-recross

Q I show you page 107 of the Cucciniello logs and show you an entry of 1335 and ask whether this means anything to you.

A Yes, it does.

Q What does it mean?

A That Nicky is going to Beansy.

Q That was June 29 of 1971. Do you know whether you were monitoring officer at this time?

A I don't know.

Q But would you have had an opportunity to read this after it was done?

A Yes.

Q It indicates a conversation in which Nicky's wife was told Nicky is at Beansy?

A That is right.

MR. SLOTNICK: May I have it marked and offer it in evidence.

MR. FEFFER: No objection.

(Defendants' Exhibit O was received in evidence.)

MR. SLOTNICK: It is one o'clock and I am through.

THE COURT: All right, 2.15.

(Luncheon recess.)

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1 rslc

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2 AFTERNOON SESSION

3 (2.15 p.m.)

4 MR. FEFFER: I have just one or two additional  
5 questions and that is it. I believe Mr. Slotnick finished  
6 prior to lunch.

7 G E O R G E E A T O N , resumed.

8 REDIRECT EXAMINATION

9 BY MR. FEFFER:

10 Q Detective Eaton, during the luncheon break  
11 did you have occasion to review the logs of the so-called  
12 Cucciniello wiretap?

13 A Yes, sir.

14 Q From the review are you now able to give a  
15 close approximation of the number of telephone calls that  
16 were intercepted over the Cucciniello wire?

17 A About almost 3000 calls.

18 (Government's Exhibit 13 was marked for  
19 identification.)

20 Q I show you what has been marked as Govern-  
21 ment's Exhibit 13 and ask you to look at it and identify  
22 it, if you can.

23 A It is a photostatic copy of the original  
24 notes s believe of the log.

25 Q The logs of the Cucciniello wire?

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A Yes.

Q How many pages of logs are there?

A 281.

MR. FEFFER: At this time I would offer 13.

MR. SLOTNICK: Can we have a voir dire on  
this? I don't have any idea what happens to these.

THE COURT: He is offering it to show the  
amount of calls.

What is the voir dire?

MR. SLOTNICK: Your Honor can take judicial  
notice of the fact there were a lot of calls and if the  
Government wants to put it in they can put it in. I have  
no objection.

(Government's Exhibit 13 for identification  
received in evidence.)

MR. SLOTNICK: Can we have the beginning  
and ending date of that?

MR. FEFFER: 5/25/71 it seems to be and the  
last page is 6/24/71.

MR. SLOTNICK: No objection.

Q Officer, did any of the monitoring officers  
for the Cuciniello wire besides yourself assist in the  
monitoring or investigation of Diane's Bar?

A No.

1  
2 MR. FEFFER: The only further thing I would  
3 have is to ask defense counsel whether they would repre-  
4 sent, having gone through all these logs looking for  
5 telephone calls with the name Beansy or Stevie Dellacava  
6 appearing and whether what they have introduced to this  
7 date are all the references to Beansy or Stevie? That  
8 would be of great value to the Court in deciding very  
9 pertinent issues they raise.

10 MR. FEITELL: I have never seen the logs  
11 before this.

12 MR. FEFFER: They have a copy of this.

13 MR. FEITELL: I don't have a copy. You tell  
14 the Judge I have a copy of that.

15 MR. FEFFER: Mr. Slotnick has and I have seen  
16 in his possession copies of the Cucciniello logs. All I  
17 am asking is so I don't have to do it myself, whether the  
18 Beansy references in these logs are all the references to  
19 Beansy.

20 THE COURT: You mean the exhibit you put in  
21 earlier today?

22 MR. FEFFER: That is right.

23 THE COURT: Mr. Slotnick, what about it?

24 MR. SLOTNICK: Apparently not. There are  
25 more and I am culling them out as I get to them. I put

1 rs13

Eaton-redirect

2 in what I think are the important ones. I just found  
3 another reference here in going through to Beansy but  
4 since it is all in evidence we will put a compilation before  
5 the Court of each and every one we find.

6 MR. FEEFFER: Fine.

7 I have no further questions.

8 MR. SLOTNICK: I have : questions.

9 However, I would like to, in view of the fact  
10 that the entire logs are in evidence, I would now move  
11 for F, G, H and I which are transcripts of some of the  
12 conversations of Steve Dellacava referred to in the logs,  
13 while conceding at this point that I don't know when these  
14 were made and they may have been made afterward but repre-  
15 sent at best what the Government says is on the tape and  
16 heard by somebody. For that purpose I put them in  
17 without representing that Detective Eaton heard them until  
18 I can hear them.

19 THE COURT: You can't testify here unless you  
20 are going to take the stand. You have a piece of paper  
21 and you say they are transcripts. I don't know that they  
22 are transcripts. If you get a stipulation they are, fine.  
23 Otherwise, I am not going to receive them.

24 MR. FEEFFER: Let me give the full background  
25 of those.

rs14

Eaton-

Mr. Slotnick asked me to produce the witness who actually made those transcripts up. I did and he is sitting right here and I told him I would put him on the stand for this very purpose.

THE COURT: You want to go through that?

MR. FEFFER: I told him that and apparently he wouldn't accept these logs were made last winter. In fact, the very date on the paper is 1972 -- the transcripts, and made from listening to the recordings.

THE COURT: All right. Then you will have to do it in the usual way. They were made last winter, that is the winter of 1972-1973?

MR. FEFFER: That is correct.

THE COURT: Then they have less significance perhaps than if they were made earlier. If you don't want to stipulate that?

MR. SLOTNICK: I stipulate they were made last winter and I am attempting to introduce these four pages of their own tape during June, July and August of 1971.

THE COURT: You can't introduce them unless it is agreed they are illustrative of a lot of other stuff. You can't rear back and make factual statements unless they are stipulated.

Please sit down.

1                   MR. SLOTNICK: If I may, your Honor --

2                   THE COURT: Mr. Slotnick, you may not. Please  
3 sit down. I don't want you to proceed that way any more  
4 with or without a jury. If you want to make a deal with  
5 brother Feffer make it during the lunch hour, don't stand  
6 up and --

7                   MR. SLOTNICK: I thought I did.

8                   THE COURT: I see. You were mistaken.

9                   Anything else of this officer?

10                  MR. FEITELL: I need a minute to look at these  
11 logs with respect to the officer's testimony that of all  
12 the officers he was the only one on the Diane Bar and  
13 Cucciniello investigation.

14                  MR. FEFFER: Defense counsel has a copy.

15                  MR. FEITELL: I don't have a copy. Mr. Slotnick  
16 has copies. I represent somebody else. I am not  
17 involved with Mr. Slotnick.

18                  THE COURT: Let me ask you, before I let and  
19 wait for you to do this, do you know the name of the  
20 officer --

21                  MR. FEITELL: He is here.

22                  THE COURT: Do you know the officers who are  
23 in Diane's Bar thing?

24                  MR. FEITELL: Off the top of my head --  
25



rs16

Eaton-

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THE COURT: Any part of your body.

MR. FEITELL: Yes.

THE COURT: If and when you find out that there may be error in what Detective Eaton said I will instruct the Government to produce him and we shall not sit while you examine it.

You are excused.

Next witness.

(Witness excused.)

MR. PEPPER: The Government calls Michael Giovannello.

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